United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-2542

United States Court of Appeals

For the Second Circuit

CHRIS-CRAFT INDUSTRIES, INC.,

Plaintiff-Appellant-Cross-Appellee,

against

PIPER AIRCRAFT CORPORATION, HOWARD PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICOLAS M. SALGO, DAVID W. WALLACE and THE FIRST BOSTON CORPORATION,

Defendants-Appellees-Cross-Appellants.

APPENDIX ON APPEAL FROM FINAL JUDGMENT OF UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

VOLUME VII — Pages 2320A to 2682A

Counsel of Record Are Listed on Inside of Front Cover

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PAGINATION AS IN ORIGINAL COPY

NOTE REGARDING THE ORGANIZATION OF THIS APPENDIX ON APPEAL

In accordance with a stipulation entered into between the parties, this Appendix on Appeal is a continuation of the one submitted to the Court on the prior appeal, Docket No. 72-1064. That Appendix consists of six volumes, totalling 2,319 pages. Therefore, this Appendix begins with volume seven (VII) and page 2320A.

Copies of the prior volumes of the Appendix will be made available to the Court in connection with this appeal.

Also, for convenience, the table of contents to the prior volumes of the Appendix is reprinted herein.

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CIVIL DOCKET 69 Civil 2227 69 Civil 2227

UNITED STATES DISTRICT COURT **JUDGE POLLACK**

Jury demand date:

C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
CHRIS CRAFT INDUSTRIES INC.	For plaintiff: PAUL WEISS GOLDBERG RIFKIND WHARTON & GARRISC 345 Park Ave. New York, N.Y. 10022
vs.	
PIPER AIRCRAFT CORPORATION	
CHARLES W. POOL	
WALTER C. JAMOUNEAU	
HOWARD PIPER 11|22|74	
THOMAS F. PIPER 11|22|74	
WILLIAM T. PIPER JR. 11|22|74	
BANGOR PUNTA CORPORATION 11|22|74	
NICHOLAS M. SALGO 11|22|74	
DAVID W. WALLACE 11|22|74	
HARRY S. BAKER	
ROBERT L. CHAMBERS	
JAMES S. GARVEY	
WILLIAM E. HILL	
CURTIS M. HUTCHINS	
GEORGE S. JONES	For defendant:
FREDERICK H. KINGSBURY	Chadbourne, Parke, Whitside & Wolff
WALTER B. MC KINNEY W. GORDON ROBERTSON	(for Piper Aircraft Corp., Thomas F. Piper,
GEORGE H. SEAL	William T. Piper, Jr. & Howard Piper).
ROBERT G. STONE	~~25 Broadway NY~~ 30 Rockefeller Plaza, NYC
W. JEROME STROUT	Webster Sheffield Fleischmann Hitchcock &
JAMES G. TREMAINE	Brookfield (for Bangor Punta Corp. and David
HARRY C. WOOD	W. Wallace) One Rockefeller Plaza 10020 582-33
THE FIRST BOSTON CORPORATION 11|22|74	Sullivan & Cromwell
PAUL L. MILLER 11|21|74 48 Wall	48 Wall St. NYC First Boston Cor½
N. BAYARD 11|21|74	Miller & Bayard)

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.		DISB.	
5 mailed x	Clerk		1-22-69	PAULWEISS	15	—		
			1-23-69	USTREAS			15	—
			9-4-69	PAUL, W	5	—		
6 mailed	Marshal		9-5-69	USTREAS			5	—
Basis of Action:	Docket fee							
S.E.C. Act of 1934								
$44,000.00	Witness fees							
Action arose at:	Depositions							

69 Civil 2227 Chris Craft Industries Inc. vs. Piper Aircraft Corp. et. al. 69 Civi

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PROCEEDINGS	Date Order Judgment
23-69 Filed complaint and issued summons.	
Filed ORDER -Ordered thay motion is granted.Mc Lean,J.	
Filed Notice of Depositions.	
Filed Amended Complaint.	
Filed Notice of Motion re: Dismiss complaint. Ret.7/10/69.	
Filed Affidavit in support of motion.	
Filed Memorandum in support of defts' motion to dismiss.	
3-69 Filed Deft Bangor Punta Corp notice of motion ret. 6.10.69 for an order dismissing the complaint, amended.	
Filed ANSWER of Piper Aircraft Corp., [illegible], William T. Piper,Jr. and Howard Piper to amended complaint.	
Issued subp. on Notice of taking Deposition	
Filed ANSWER of Bangor Punta Corp. and David W. Wallace to amended complaint.	
Filed stip and order that time for David W. Wallace to serve his answer to the complaint is extended to 6.23.69 for pltf.	
Filed record of proceedings dated 6-23-69	
Filed Bangor notice to take depositions.	
Filed ENDORSED on Motion ret. 6.27.69 ORDER - Motion withdrawn Lasker, J. Motion No 66	
Filed Memo endorsed on motion ret. 6.27.69 - Ordered motion is granted Lasker, J Motion no 66.	
Filed Affidavit of Service of summons and complaint on def. William T. Piper on 5/24/69.	
Served: David W.Wallace on 5/24/69.	
Bangor Punta Corp. on 5/24/69 by David W. Wallace.	
Paul L.Miller by Mrs. Paul L.Miller on 5/24/69.	
Howard Piper on 5/24/69.	
Thomas F. Piper 5/24/69.	
Piper Aircraft Corp. on 5/24/69.	
The First Boston Corp. on 5/28/69.	
David W. Wallace 5/24/69.	
Filed Amended ANSWER of certain defendants.	
Filed Deft Bangor's supplementary notice to take depositions.	
Filed pltffs notice to take depositions of persons indicated.	
Filed stip and order that time for deft First Boston Corp. [illegible] and to answer to the complaint is extended to 7/1/69 [illegible]	
Filed ANSWER of Defts. First Boston Corp Miller & Bayard	
7-2 Filed stipulation and order to take depositions as indicated. Bonsal, J. (Also in 69 Civil 2354).	
7-9-69 Filed Memorandum in support of Chris-Craft's motion for a pre.inj.	
7-9 Filed Order to Show Cause re: Pre.Inj. Ret.7/29/69.	
7-9 Filed Affidavit in opposition.	
7-9 Filed Affidavit in opposition submitted by Bangor Punta Corp. of John F. Ellis	
Filed Affidavit in opposition submitted by Bangor Punta Corp. John J. Hanlon.	
Filed Memorandum in oppositionto pltf's.motion.	
7-29-69 Filed Supplemental Memorandum submitted by Bangor Punta Corp.	
Filed (in court) Plaintiff's Reply Memorandum.	
Filed (in court) Affidavit of John S. Buckley in opposition to pltf's motion.	
Filed (in court) Plaintiff's Reply Affidavit.	
Filed Affidavit in opposition to motion.	
7-29 Filed Memorandum of defts., Piper Aircraft Corp.,etc. to pltf's.motion.	
7-30-69 Filed ORDER #36107. Tenney, J. ***For the foregoing reasons,plaintiff's motion is in all respects denied. So ordered. (mailed notice)	
7-31-69 Filed stipulation and order showing the schedule for taking depositions. So ordered. Wyatt, J.	

continued next page

69 CIVIL 2227 CHRIS CRAFT INDUSTRIES INC. vs. FIRST ATLANTIC CORP.,etc.

JUDGE POLLACK 2322 A

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order or Judgment Note
Aug.28-69	Filed Memorandum in opposition to proposed supplementary order.	
Aug.28-69	Filed Plaintiff's Memorandum in support of proposed supplementary order.	
Aug.28-69	Filed Memorandum in opposition to proposed supplementary order.	
Aug.28-69	Filed MEMORANDUM OPINION #30121. Tenney, J. ...For the foregoing reasons, the proposed supplementary order submitted to this Court by plaintiff will not be signed. (mailed notice).	
Sept.4-69	Filed Notice of Appeal by Chris-Craft Industries, Inc. (mailed copy)	
June 9-69	Filed Memorandum in opposition to deft. Bangor Punta's motion to dismiss.	
June 9-69	Filed Affidavit in opposition.	
June 24-69	Filed Notice to take Depositions.	
Sep/8/69	Filed certified record on appeal to the U.S.C.A.	
Sep/15/69	Filed stip and order that the depositions of witnesses is adj as indicated. Frankel J.	
Sep/15/69	Filed stip and order that depositions of witnesses is adj'd as indicated Frankel J.	
Oct/22/69	**Filed stip and order that time for deposition of Deft Bangor is ajdourned as indicated. Weinfeld.J**	
Nov.25-69	Filed Notice to take Depositions. (Also in 69 Civ. 2354).	
Nov.25-69	Filed Notice to take Deposition.	
DEEC?%7 5/69	**Filed affidavit of service on feft Salgo.....**	
Dec/5/69	**Filed Deft Bangors notice ot motion ret. 12/11/69 re Stay depostion**	
Dec/5/69	**Filed affidaivt of James V. Ryan. in support of motion**	
Dec/5/69	**Filed deft Bangors memorandum of law in support of mtotion**	
Dec.11-69	Filed (in court) Affidavit in support of motion.	
Dec.11-69	Filed (in court) Affidavit in opposition to motion.	
Dec.12-69	Filed Order and stipulation that depositions shall be taken on dates as indicated of Nicolas M.Salgo,David W.Wallace and John Flick,etc.etc. So ordered. Frankel, J. (Also in 69 Civ. 2354).	
Dec.12-69	Filed MEMO.END. on motion papers filed 12/5/69. Motion withdrawn. So ordered. Frankel, J.	
Dec.15-69	Filed Notice to take Depositions. (Also in 69 Civ. 2354).	
Dec/16/69	**Filed deposition of Johh Hawkinson (Mailed notices)**	
Dec.17-69	Filed Notice to take Depositions.	
Dec.19-69	Filed transcript of Record of Proceeding of Dec.8,1969.	
Dec.22-69	Filed stipulation and order extending deft. Nicolas M.Salgo's time to answer complaint to 1/14/70. So ordered. Cannella, J.	
Dec 31-69	Filed pltff's notice of deposition	
Jan/9/70	**Filed pltffs notice of motion ret. 1/15/70 Re production and inspection.**	
Jan/9/70	Filed Pltffs memorandum in suprort of motion.	
Jan14-70	Filed stip. & order extending time of deft.(Salgo) to answer amended complaint to 1-28-70.-Bonsal,J.	
Jan14-70	Filed pltff's affdvt. & notice of motion to compel answers-ret. 1-22-70	
Jan14-70	Filed pltff's memorandum in support of its motion	
Jan14-70	Filed stip. adjourning pltffs' motion for production of documents filed 1-9-70 to 1-22-70	
Jan.20-70	Filed Pltf. Bangor (69 Civ. 2354) and Deft. Bangor (69 Civ.2227) Notice to take Deposition of witnesses indicate.	
Jan.21-70	Filed Affidavit in opposition to motion.	
Jan.21-70	Filed Memorandum submitted in opposition to plaintiff's motion.	
Jan.22-70	Filed stipulation and order further adjourning deposition of deft. David W.Wallace, Pres. of deft. Bangor Punto Corp; and of John E. Flick, as indicated. So ordered. Pollack, J.	

continued next page

TE	PROCEEDINGS	Date Order c Judgment Not
6-70	Filed Affidavit pur. to Gen.Rule 9(f).	
26-70	Filed MEMO.END. on motion papers filed 1/14/70. **In the absence of a substantial and valid reason for the examination, it would be unjust to deny a protective order to the party examined. This disposition is without prejudice to renewal of the application of the plaintiff on good cause shown. So ordered. Pollack, J. (mailed notice)	
28-70	Filed Pltff's notice of deposition	
9-70	Filed Supplementary Notice to take Depositions of American Investors Fund,Inc., etc.	
0-70	Filed Notice to take Deposition. (Also in 69 Civil 2354).	
17-70	Filed Supplementary Notice to take Depositions. " " "	
,70	Filed pltff supplemental notice of deposition.	
4-70	Filed pltff's notice of deposition of parties listed	
3-70	Filed pltff's notice to take deposition of B. Cornfeld on 5-28-70.	
14-70	Filed pltff's notice Re: contents of report.	
23-70	Filed supplemental notice of deposition to be taken by pltff. David M. Munro--5-11-70--R.E. Slater--5-11-70--A.Long--5-12-70 A. Lipper III --5-13-70--D. Farrar --5-26-70. Summons issued.	
8-70	Filed deft(Bangor Punta Corp.) supplemental notice to take deposition, of Madison Fund, Inc. on 5-18-70-- American Investors Fund,5-21-70, Muriel Siebert & Company. on 6-2-70.	
12-70	Filed deposition of Robert W. Morey, Jr taken on 2-27-70.	
15-70	Filed deft's supplemental notice to take depositions of C.L.Gordon, on 6-3-70.	
19-70	Filed deft's supplemental notice to take deposition of Dean LeBaron.	
20-70	Filed deft's notice to take deposition of Bank of New York on 6-11-70, and John M. Blewer on 6-18-70.	
26-70	Filed Bungor notice to take depositionof witnesses indicated.	
2-70	Filed deposition of William A. Lester taken on 2-27-70.	
2-70	Filed deposition of Mary P. Bolles taken on 4-24-70.	
.9-70	Filed supplemental notice by deft.(Bangor Punta Corp.) to take depositions of J.M. Hartwell & Co. on 6-26-70 & Investors Diversified Services on 6-30-70.	
12-70	Filed deft's(Bangor Punta Corp.) notice to take deposition of Sheriff Securities Corp. on 6-25-70 & Albert Frank -Guenther Law, Incorp. on 7-7-70.	
16-70	Filed true copy of order from the USCA: Order of District Court is affirmed & that the action be & it hereby is remanded to said District Court for further proceedings not inconsistent with the opinion of this court with costs to be taxed against the appellant. Clerk.	
16-60	Filed true copy from the USCA: Ordered that the judgment of this court of November 6,1969 be & it hereby is vacated. Clerk. m/n	
22-70	Filed pltff's second amended complaint.	
6 70	Filed pltff's notice to take deposition of deft. First Boston Corp. on 8-8-70.	
6-70	Filed pltff's notice to take deposition of Conning & Co. on 7-28-70.	
0-70	Filed pltff's notice to take deposition of Ellsworth Buck on 8-4-70.	
29-70	Filed pltff's notice to take deposition of Troster,Singer & Co.	
3-70	Filed pltff's notice to take deposition of Troster,Singer & Co.	
3-70	Filed ANSWER & counterclaim of certain deft's to second amended complaint.	CPW&W
16-70	Filed the Piper proposed findings of fact.	
5-70	Filed pltff's REPLY to Counterclaim of defts'	
5-70	Filed affidavit of service by EDWARD H. SUTTON.	

continued on page 5

FPI—LK—12-3-63—12M—2945

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D. C. 110 Rev. Civil Docket Continuation

JUDGE POLLACK

DATE	PROCEEDINGS	Date Order Judgment N
Oct.8-70	Filed pltff's deposition of Frederic C. Dumaine, Jr. a witness	
12-23-70	~~Filed Transcript of record of proceedings, dated~~ 11-24-70	
Feb.1-71	Filed order that all agreed and contested findings of fact shall not be filed so as to be made publicly available, but shall be filed in the Chambers of the undersigned for such use as the Court may deem appropriate for the determination of this action. That, in addition to the persons designated order entered on 1-23-70, the parties may disclose such information to such expert witness or witnesses as the parties may retain to testify at the trial of this action. Ordered, that the underlying documents and information and said agreed and contested findings of fact shall continue to be subject to the terms and provisions of the aforesaid order on 1-23-70. Pollack, J.	
Feb.5-71	Filed pltff's notice to take deposition of John M. Ferris, a witness on 2-18-71	
Feb.6-71	BEFORE: POLLACK,J. -NON JURY TRIAL BEGUN. ADJD SINE DIE.	
Mar.19-71	Filed ANSWER to second amended complaint by deft's(First Boston Corp,P.L. Miller & N.Bayard.	S&C.
Feb.6-71	Trial Begun: Before Pollack, J. Non-Jury Trial Adjourned Sine Die	
Mar.9-71	Trial continued	
Mar.10-71	Trial continued	
Mar.11-71	Trial "	
Mar.12-71	Trial "	
Mar.15-71	Trial "	
Mar.16-71	Trial "	
Mar.17-71	Trial "	
Mar.18-71	Trial " pltff rests, defts' move to dismiss-Decision Reserved.	
Mar 19-71	Trail continued and concluded-Defts' Bargor Punta, N. Salgo & D. Wallace rest. and renew the motions made previously to dismiss the complaint--Decision Reserved. Defts. first Boston, P. Miller & N. Bayard restand renew motion to dismiss--Decision Reserved. Pltff. Chirs Craft moves to dismiss the counterclaim of piper Aircraft-- Decision Reserved. Pollack, J.	
Apr.19-71	~~Filed Transcript of record of proceedings dated~~ 2-6-71	
Jul.9-71	Filed transcript of record of proceedings dated 3-9,10,11,12,15,16, 17,18,& 19-71.	
Dec.10-71	Filed Opinion #38096: The counterclaim of Piper against Chris-Craft, is dismissed for lailure to sustain the burdenof proof thereof. THe foregoing shall constitute the findings & conclusions required, by F.R. Civ P. 52(a). So ordered, Pollack,J. Judg. Ent. Clerk Ent.12-1	
Dec.10-71	Filed Findings of fact: Chris-Craft affirmative case twin comanche, findings only.	
Dec.10-71	Filed Findings of Fact: Chris-Craft Affirmative Case.	
Dec. 14-71	Filed pltff's notice of appeal to U.S.C.A. -mailed copies.	
Jan. 19-72	Filed certification of record on Appeal.	
Feb 14-72	Filed certification of record on appeal to the USCA	
Mar 3-72	Filed stipulation designating exhibits to be transmitted to U.S.C.A. as part of record on appeal.	
Mar 7-72	Filed notice of certification of record on appeal to the USCA.	
~~Jun 5-72~~	~~Filed stip and order that time for defts to answer the complaint is extended to 6-15-72 Cannella J.~~	
Jan.16-73	Filed Order that action is dismissed as against all defts on the merits. Pollack,J. (Order was signed on December 10, 19--)	

over

DATE	PROCEEDINGS	Date Order or Judgment Noted
Jun.15,73	Filed True Copy of Mandate from U S C A: with copy of opinion. Ordered that judgment of Dist. Court is reversed and that the action be and it is remanded to the Dist. Court for further proceedings in accordance with the opinion of this Court with costs to be taxed against the appellee. No bill of costs or statement attached. MANSFIELD, TIMBERS, AND GURFEIN, J. (n/m to all attys.)	
Jun15,73	Filed True copy of ORDER: Ordered that with respect to the petition for rehearing on behalf of appellees Paul L. Miller and Nicholas H. Bayard, the petition in granted to the extent as indicated "In view of the voluminous record, upon remand, the district court shall determine upon the record whether, under the principles of liability regarding Fiduciaries set forth in this opinion, Paul L. Miller and Nicholas H. Bayard or either of them, is individually liable." That in all other respects the said petition petitions for rehearing are denied. MANSFIELD, TIMBERS, U S C A J. and GURFEIN, U S D C J.	
10/[illegible]/73	pre-trial before Pollack	
Jan2-74	Filed pltff's memo of law on damages and injuntive relief.	
Oct9-73	Filed corrected copy of mandate of U.S.C.A., the correction made was in the mandate covering our docket 72-1120 in the last paragraph. The costs taxed should be in favor of Christ-Craft Industries,etc. A. Daniel Fusaro,Clerk by V. Carlin	
Jan21-74	Filed P.Miller & N.Bayard's notice of motion re: dismissal ret:(no date)	
Jan21-74	Filed MEMO-END, on motion dtd this date. Discontinuance granted on consent. Order signed. Pollack,J. mn	
Jan21-74	Filed ORDER that the actionagainst defts P. Miller & N. Bayard are discontinued without costs to either party, with prejudice and there being no reason for delay, judgment of discontinuance may be entered pursunat to FRCP 54(b) forthwith. This is without prejudice as to the claims herein against the other parties. Pollack,J. mn	
3[illegible]		
7		
Feb1-74	Filed deft Howard Piper, T. Piper & Wm. Piper's notice ofchange of atty.	
Feb 6-74	Filed defts H.Piper,T.Piper & Wm. Piper' - Notice- of change of address of atty.	
eb 25/74	Filed -Memo of Law on behalf of deft the First Boston Corp.	
eb 27/74	Filed -Memo of Law - on behalf of defts Bangor Punta Corp, Micholas M. Salgo and David W. Wallace.	
ar 1/74	Filed memo of law of defts Howard Piper,Thomas F. Piper and Wm. T. Piper on remand.	
pr22/74	Non-jury trial begun before Judge Pollack.	
pr23/74	Trial cont'd.	
pr24/74	Trial cont'd.	
pr25/74	Trial cont'd and concluded. decision reserved. Pollack,J.	
Jn 7/74	Filed pltff's post-trial memorandum.	
/18/74	Filed [illegible]	
ov.6/74	Filed OPINION # 41[illegible]- ...No instructions with respect to allowance of interest were include in the mandate. However, the basis for and object of the damage award found by the Court of Appeals seem intended to carry the addition of prejudgment interest on the recovery as quantified here.	

-cont'd. on next page-

FPI-LK-12365-12M-1/73

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	D Ju
	entry of 11/6/74 (opinion # 41398) continued. Consequently, such interest is allowed and shall be computed on the recovery from 9/5/69 at the legal rate and included in the decree to be entered. Finally, pltff. has requested as award of atty.'s fees, arguing that a public rather than a selfish interest has been served by the litigation...denied. Costs are awarded to the pltff. to be taxed by the Clerk. The Foregoing shall constitute the findings of fact and conclusions of law required by Rule 52(a) FRCP. The parties may submit a decree accordingly conforming with Rule 54(a) FRCP for consideration by the Court. Pollack,J. mailed notices.	
Nov.22/74	Filed OPINION # 41474-...The pltff.'s application for a stay of the Decree pending appeal is consequently denied. Pollack,J.	
Nov.22/74	Filed FINAL JUDGMENT AND DECREE # 74, 903 - Ordered,etc. that Chris-Craft shall recover of defts., Howard Piper, Thomas F. Piper, T. Piper,Jr., Bangor Punta Corp., Nicholas M. Salgo, David M. Wallace, and The First Boston Corp., jointly and severally, the sum of $1,673,988., plus interest in the amount of $599,010.89, with costs to be taxed by the Clerk. Pollack,J. Judgement entered 11/25/74 Clerk	
Nov.25-74	**Filed Pltff's notice of appeal to the USCA from final judgment ent. on 11-22-74. Mailed copies to Webster,Sheffield,Fleischmann Hitchcock & Brookfield-Chadbourne,Parke,Whiteside & Wolfe & Sullivan & Cromwell.**	
Dec.9/74	Filed notice to the docket clerk that the record on appeal has been certified and transmitted to the U.S.C. A.	
Dec 9/74	Filed designation of trial exhibits to be transferred to USCA.	

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CHRIS-CRAFT INDUSTRIES, INC.,

Plaintiff,

v.

PIPER AIRCRAFT CORPORATION, HOWARD PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICHOLAS M. SALGO, DAVID W. WALLACE, and THE FIRST BOSTON CORPORATION,

Defendants.

COPY

69 CIV. 2227(MP)

O P I N I O N

APPEARANCES:

PAUL, WEISS, GOLDBERG, RIFKIND,
WHARTON & GARRISON
Attorneys for Plaintiff
345 Park Avenue
New York, N.Y. 10022
By: Arthur L. Liman, Esq.,
Jack C. Auspitz, Esq.,
Anthony M. Radice, Esq. and
Richard A. Miller, Esq., of Counsel

WEBSTER, SHEFFIELD, FLEISCHMANN,
HITCHCOCK & BROOKFIELD
Attorneys for Defendants (Bangor Punta
Corporation., David W. Wallace and
Nicholas M. Salgo)
One Rockefeller Plaza
New York, N.Y. 10020
By: James V. Ryan, Esq.,
C. Kenneth Shank, Jr., Esq. and
Robert A. Kandel, Esq., of Counsel

SULLIVAN & CROMWELL
Attorneys for Defendant (The First
Boston Corporation)
48 Wall Street
New York, N.Y. 10005
By: J. F. Arning, Esq.,
C. W. Sullivan, Esq. and
R. Urowsky, Esq., of Counsel

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Defendants (Piper Aircraft
Corporation, Howard Piper, Thomas F.
Piper and William T. Piper, Jr.)
30 Rockefeller Plaza
New York, N.Y. 10020
By: Zachary Shimer, Esq., of Counsel

Milton Pollack, District Judge.

This case is on remand from the Court of Appeals to determine the quantum of compensatory damages due to Chris-Craft Industries, Inc. (CCI or CC herein) from the defendants who were not dismissed from this suit and to include in the judgment an injunctive provision barring Bangor Punta Corporation (BPC or BP herein) from voting for a period of at least 5 years the Piper shares it obtained through purchases for cash and by an exchange offer which did not comply with the securities laws. 1/

Briefly, the Court of Appeals held herein that where a successful contender for control of a target corporation has attained part of its majority of the voting shares of the target corporation by purchases made

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1/ The original order of the Court of Appeals found defendants Paul L. Miller and Nicholas H. Bayard liable to CC. On rehearing, this determination was withdrawn and the Court of Appeals left it to the District Court to determine from the record whether, under the principles of liability regarding First Boston and its officers announced in the opinion on the appeal, either of said defendants was individually liable. The plaintiff then stipulated in the District Court that the complaint against them should be dismissed and it was so ordered.

in violation of the securities laws, the defeated contestant for control, although it neither purchased any securities from its competitor nor was deceived by any acts or statements of the latter, was entitled to sue the winner for damages as may be shown, measured by the reduction, if any, in the appraisal value of its shares of the target corporation when its opponent's position as a majority owner became established.

The right to sue and to claim such damages was accorded to encourage and implement the enforcement of the federal securities laws through private litigation and to deny to a securities law violator the fruits of obtaining shares of stock illegally, even though the unsuccessful contender was not induced by its competitor to enter the contest or to become a purchaser of the shares of the target corporation. The harm done to the defeated contestant according to the Court of Appeals is not that it had to pay more for the stock it bought but that it obtained less stock than it needed for control and this irrespective of whether it be shown that it could in fact have obtained control if there had been no interference with its opportunity.

Twice in the main opinion on appeal, it was clearly stated that, although there was an interference with CC's opportunity to obtain control, CC failed to establish that it could otherwise have succeeded in obtaining enough shares to give it control.[2/]

> We agree with the district court's finding that CCI failed to show with reasonable certainty that it would have obtained a controlling position in Piper had it not been for the violations of the securities laws by BPC and First Boston. 480 F.2d at 373.
>
> We cannot say that CCI would have obtained a majority of Piper stock had BPC not violated the law, ... 480 F.2d at 378-9.

The Court of Appeals pointed out that "the questions presented are of first impression", 480 F.2d 379, and as a

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[2/] The concurring opinion of Judge Mansfield points out that early in the control contest, CCI had run out of money and due to a restrictive agreement in effect with its senior noteholders and the prohibitive cost of borrowing additional funds, CC's chances of obtaining loan financing to pick up more of Piper's stock "were negligible" (p.402) "In summary, having 'shot its bolt' in the financial sense by early February 1969 CCI was thereafter relegated in its quest for control of Piper to the use of exchange offers. It was in no position to purchase for cash any appreciable amount of Piper shares over and above the 304,606 tendered in response to its initial cash offer". 480 F.2d at 402.

moment's reflection will show, in ascertaining the damages called for, the appraisal mandated by the Court of Appeals requires the use of hypothetical figures and values. The parties constructed and theorized such figures and values from circumspectly selected data to supply their damage estimate contentions. Not surprisingly, each side charges the other's expert witnesses with internal factual inconsistencies. The Court, in a sense, agrees in the main with both parties.

The Court of Appeals set forth the damage issue for this Court as follows:

> The measure of damages should be the reduction in the appraisal value of CCI's Piper holdings attributable to BPC's taking a majority position and reducing CCI to a minority position, and thus being able to compel a merger at any time. 480 F.2d at 380.

Controversy produced by the mandate has arisen in part from perplexity in grasping its concept and forging a rational method of application. The words used are capable of a variety of interpretations and shadings, as the parties have demonstrated in their respective briefs, and they have put this Court to the difficult choice

between following the strict literal meaning of the words and the broader remedial intent evidenced by the general thrust of the appellate decision. The task of reconciling the often conflicting results stemming from each course, has in turn produced as many complexities as it has clarified. Additionally, the quantification of unliquidated damages is hardly an exact science; computation thereof is accomplished basically by estimation and inference. See generally Bigelow v. RKO Radio Pictures, Inc., 327 U.S. 251, 264-5 (1946); Columbia Pictures Industries, Inc. v. American Broadcasting Companies, Inc., 501 F.2d 894 (2d Cir. July 3, 1974)(slip op. at 4667); Crane Co. v. American Standard, Inc., 490 F.2d 332, 343 (2d Cir. 1973)(damage computations "demand prodigies of prophecy and measurement beyond the capacity of jurors and perhaps of a judge").

The damage inquiry herein, naturally enough, called for expert testimony to assist in the evaluation of the manner and extent to which CC had been damaged by the

violations established. The parties took many months to prepare for the hearing on damages. The selection and preparation of their experts was obviously carefully orchestrated; indeed, it would be naive to assume that the experts were selected and proceeded without regard to the interests of the party who called them. Rather, the record clearly reflects that by and large the experts were result-oriented, a fact which tended to restrict their contribution to something less than a full view of the damage problem and to make their results fall short of meeting the full scope of the real questions to be decided.

As a general concept, both parties agree that CC's damages must be measured by comparing the value of its Piper holdings prior and subsequent to BP's acquisition of majority ownership. The disagreement surfaces, however, in the differing paths which the parties take in reaching a valuation.

Preliminarily, there is a deep dispute over the base from which the CC ownership is to be valued for the damage inquiry. BP suggests that no injury occurred until

the moment immediately preceding its acquisition of majority ownership. CC, however, argues that its Piper stock should be valued as if CC was the owner of 41%, and BP owned 31% of Piper.[3/]

Neither BP nor CC, however, have fully addressed the purpose of the mandate in their analysis of the inquiry before the Court. The Court of Appeals' determination that BP unlawfully purchased 14% of the Piper shares suggests that the 14% must be effectively "discarded" by BP; indeed, the injunction ordered by the Court of Appeals is aimed at effectively freezing the voting of that stock for a significant period. Without that 14%, BP would have owned but 37% on September 5, the date it gained a majority. CC, meanwhile, would have held at least 42%, the amount it in fact ended up with on that date. Since the inquiry here is to determine the damage suffered by CC attributable to BP, it is therefore appropriate to determine what the value of CC's block of

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3/ On August 7, 1969, BP owned 45% of Piper and CC owned 41%. BP had acquired 14% of its stock unlawfully; thus, discarding that 14%, CC would have "led" 41% to 31% on August 7.

stock would have been worth on September 5[4/] absent BP's illegal conduct, i.e., if CC on that date had led in the contest 42% to 37%. In turn it must be determined how that value was affected by BP's taking a majority position and reducing CC to a minority position.

The methodology of that quantification is by no means simple. The Court of Appeals directed this Court to measure the "reduction" in the "appraisal value" of CC's Piper holdings attributable to BP's unlawful conduct. BP, therefore, insisting that the instructions must be literally followed, would have this Court consider BP's merger power and look only at whether there was any reduction in the appraisal value of the Piper stock in the context of a statutory appraisal proceeding, i.e., the amount that a Court would have awarded a Piper stockholder in a statutory appraisal proceeding on September 5, 1969.

CC, on the other hand, argues that BP's literal interpretation of the mandate and any use of the concepts of a statutory appraisal would render the Court of Appeals' decision nugatory. CC argues that BP's interpretation would erase

4/ (Footnote 4 on next page)

any difference in the statutory appraisal value of the Piper shares measured on September 5 just prior and then subsequent to BP's gaining majority ownership.

CC's reading would jettison the measured phrasing of the Court of Appeals' mandate. It must be presumed that the talisman, "appraisal value", was chosen purposefully. The words so used must be viewed in the legal context in which they appear in the mandate. The Court of Appeals associated the reduction of the appraisal value to be found with BP's "being able to compel a merger at any time."5/

4/ Initially, the parties hotly contested the relevant date to be used for the valuation inquiry. CC initially contended that the Piper stock should be valued as of August 7, 1969. However, in its post-hearing memorandum, CC has abandoned that argument and has joined with BP in adopting the September 5 date for valuation purposes. The crucial question of the methodology to be used, however, remains unchanged.

5/ It is basic corporate law that statutory appraisal proceedings, when available, can be invoked by dissenters who object to mergers of the corporate enterprise. Such is the law of Pennsylvania, the law which applies herein. See 15 Pa. Stat. Ann. §1908 (Purdon's, 1967).

If the word "appraisal" is to be considered in its more colloquial meaning, i.e. "to fix a price ... as an official value" (Oxford English Dictionary, 3d Ed. 1965), the phrase "appraisal value" would be redundant. To be sure, the Pennsylvania appraisal statute eschews the term "appraisal value" in favor of the words "fair value"; nonetheless, the Pennsylvania cases, as well as the common legal usage in this Circuit and elsewhere, clearly acknowledge the significance of the term "appraisal value" (in the context of merger) as referring solely to statutory proceedings, see Lowry v. General Waterworks Corp., 26 Pa. D. & C. 2d 154 (1963); Petition of Kreher, 108 A.2d 708, 379 Pa. 313 (1954). See also Miller v. Steinbach, 268 F. Supp. 255 (S.D.N.Y. 1967) (applying Pennsylvania law). That CC could not have been forced by BP's voting power alone into such an appraisal proceeding while CC hypothetically held a five-percentage-point lead over BP is of no moment. For reasons best known to it, the Court of Appeals has directed this Court to determine the "appraisal value" of CC's Piper holdings as if keyed to such a proceeding, viz., being able to compel a merger.

BP, however, has not convinced the Court with its argument that there was no "reduction" in the appraisal value of CC's Piper holdings. Other considerations could well come into play which might involve advantages from which CC was foreclosed.[6/]

6/ It is not at all clear that the Court of Appeals considered the effect of cumulative voting on Piper's even-man Board of Directors. In fact, when the Board stood at eight directors -- as it did in September of 1969 -- BP, as a majority owner, was entitled to but four of the directors, CC three, and the public retained the balance of power. Possession of a mathematical majority of the outstanding shares gives the illusion that the majority will also be able to elect a majority of the directors. However, where, as here, there is cumulative voting and an even-numbered Board of Directors, it takes more than a bare majority to elect more than half of the Board. Thus, as the Piper Board stood in 1969, BP by no means instantaneously achieved the absolute power to compel a merger "at any time" when it obtained 51% of the Piper shares, since it was at that point assured of only half of the directorships, and Board approval would have been necessary under Pennsylvania law for any merger plan. See 15 Pa. Stat. Ann. §1902 (Purdon's 1967). To be sure, as plaintiff seems belatedly to have recognized, as a majority stockholder BP could have used its voting power at a stockholders' meeting to alter the by-laws and change the number of the Board of Directors, thereby gaining the mathematical opportunity to elect a majority of the Board. Such an effort in these circumstances would surely have been highly suspect and might well have

raised thorny questions for litigation; in any case, the ability to so alter the Board hardly is akin to the Court of Appeals' determination that BP gained the power to force a merger "at any time". Non constat, for present purposes, this Court will assume that BP did in fact acquire that merger power on September 5, 1969, heeding the oft-repeated rule that the District Court must follow the mandate of the Court of Appeals however erroneous the lower Court may deem that mandate to be. Crane Co. v. American Standard, Inc., 490 F.2d 332, 341 (2d Cir. 1973).

Prior to the time that BP gained majority ownership, CC clearly possessed at least the opportunity to itself gain control of Piper, and this opportunity was erased once BP emerged as the holder of a majority of the Piper shares on September 5. Thus, at the moment that CC was confined to its minority ownership status, the "appraisal value" of its Piper shares was possibly reduced because of the removal of CC's opportunity to gain control of Piper and would have to be discounted to reflect the uncertainty of its position due to its dependence in some respects on BP's future conduct. CC contends that BP could be expected to choose the bottom of a business cycle to merge and force CC to seek its appraisal rights then under Pennsylvania law. 7/

7/ It is unclear as a matter of practical finance whether BP would in fact choose such a time for merger. At the bottom of a business cycle and in a period of contraction, BP (and thus Piper) would clearly have limited resources or at least limited economic incentives to fund an appraisal award; CC's huge minority block, by any standard, would sport a heavy price tag to be borne by BP in such a proceeding. Moreover, as markets rise, the cash cost of satisfying an appraisal demand might well increase greatly without a corresponding increase in available cash to fund the payout, thus chilling any prospect of merger in such circumstances.

Quantifying that reduction in present value, however, is well-nigh an impossible task. It is one thing to recognize in the abstract that there has been a "reduction", but quite another to assign a value to that concept. No one can guess when, or even if, BP would ever force CC to submit to or seek a statutory appraisal or predict in what presently unforseeable way BP might legitimately turn control to its advantage and CC's disadvantage. Indeed, the injunction ordered by the Court of Appeals expressly obviates that possibility for at least five years. BP's "power" to compel a merger is, standing alone, too speculative to quantify. It is highly doubtful that the Court of Appeals intended that this Court should engage in such conjuries. The more logical inference is that this Court should on the basis of good sense as applied to the record reach an appraisal decision making the best estimate possible under the circumstances of what "reduction" in "appraisal value" occurred.

Thus, this Court must find a value for CC's Piper holdings both before and after BP gained majority ownership. Obviously, the objective components of that value, as recognized by the experts -- such as asset value, and market value -- remained unchanged in BP's gaining a majority. The relevant block for purposes of such an evaluation is merely an anonymous 100-share block, and each of the experts so proceeded. The "value" of such a block was not altered by BP's unlawful conduct. Consequently, the only issue for determination is what premium CC's block would have commanded that disappeared once BP took "control". CC is presently in a position no different from that of any minority owner (albeit a large one) of any publicly held corporation. Only that premium representing the value of CC's opportunity to gain control has been removed. Thus, it is the removal of that premium which represents the reduction in value of CC's Piper holdings attributable to BP's acquisition of majority ownership.

The value of the plurality position

The determination of the value of CC's hypothetical "lead" of 42% to 37% (and hence the value of CC's lost opportunity to gain control) must be preceded by an estimate of the fair market value of the Piper stock on September 5, 1969. For it is elementary that whatever premium CC's stock contained expressive of its lead position and its opportunity therewith to gain control must be added to the fair market value of its holding in Piper stock on that date.[8/] Once the fair market value is determined, the value of CC's opportunity to gain control can be evaluated by determining the value of actual possession of control of Piper to CC. That value will be a figure that must be discounted by the factors of probability of success, time, and the economic benefit of that control to CC's holdings.

8/ The amounts paid by the contestants in the midst of the battle are by no means the sole or even a fair indication of the premium relevant herein. The conduct of contestants in such battles is often marked by "irrationality" (Tr. 500-24); no expert testified that the Piper investment was worth anything approaching the $80 per share paid by the parties. The amounts paid were clearly wildly and artificially inflated due to the emotional, as well as actual, struggle of the parties. Such amounts, therefore, must be discarded for purposes of determining fair market value.

I. Fair Market Value

The "fair market value" of Piper which must be determined is that market value of Piper uninfluenced by the fight for control.[9/]

Each of the experts attempted to formulate the fair market value of the Piper stock as of September 5. Their somewhat surprisingly narrow range of disagreement highlights the relative acceptability and uniformity of their techniques and methodologies with respect to

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9/ This does not mean that Piper's so-called attractiveness as a "conglomerate target" (alluded to by Prof. Roger Murray, one of the plaintiff's experts, and adopted extemporaneously on the witness stand by another of plaintiff's experts, Robert Rosenkranz) should be ignored. The "fair market value" does no more than remove the distorted, artificially inflated prices that were being paid by the contestants. To the extent that Piper, standing alone, held any "attractiveness" as a target, that "attractiveness" would be represented in its fair market value notwithstanding the presence or absence of a hotly contested fight for control.

estimating a fair market value.[10/]

The relevant testimony as to "fair market value" can be summarized as follows:

Dr. Sigmund Wahrsager, testifying for CC, determined that the fair market value of the Piper shares on September 5, 1969 would have been $52 per share. Wahrsager is a partner in the Wall Street firm of Bear, Stearns & Co. responsible for the activities of the corporate finance department, which deals with public offerings, private placements, mergers and acquisitions, tenders and evaluation of securities. Wahrsager's testimony as to fair market value reflected utilization of the same technique

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10/ At the first trial, plaintiff's expert was Dr. Douglas Bellemore, a Professor at a graduate school of Business Administration. Bellemore never addressed the question of fair market value in his testimony; moreover, what theories he did utilize were, together with their results, wholly out of line with all of the other experts produced by both parties. Indeed, this Court's earlier characterization of Bellemore's testimony as "unsubstantiated and cursory" (337 F. Supp. at 1153, n. 11) seems now to have been adopted sub silentio by his proponent, the plaintiff, which has now abandoned any reliance on the Bellemore testimony. For practical purposes, the Bellemore testimony can be discarded for this inquiry.

used by all the experts, viz., to apply a selected price-earnings multiple to Piper's earnings during the period considered. Such a computation has long been recognized as an accepted technique in determining fair market value. See, e.g., Morris v. Burchard, 373 F. Supp. 373 (S.D.N.Y. 1974); Vandervelde v. Put and Call Brokers, 344 F. Supp. 118, 150-151 (S.D.N.Y. 1972). See generally Dewing, The Financial Policy of Corporations 390-391 (5th Ed. 1953).

Professor Roger Murray, a professor of finance at Columbia University's Business School with a long list of financial credits, another of CC's experts, was somewhat more oblique in his approach. His "fair market value" computation reflected a built-in premium value for CC's lead position. However, stripped of its semantics, Murray concluded that the Piper stock, absent the control fight, would have been valued at $36.75 per share -- by far the lowest figure offered by any of the experts.

Plaintiff's remaining expert, Robert Rosenkranz, carrying responsibilities in the corporate finance area, had introduced the Chris-Craft account to his firm, Messrs. Oppenheimer & Co., after the events complained of herein.

The firm became financial adviser to CC in connection with a recapitalization plan. His and their interest are to be considered in evaluating his testimony. Rosenkranz testified that the Piper stock had a fair market value of $58 in September of 1969.[11/]

11/ In addition, plaintiff on rebuttal produced an unscheduled witness, Mr. Steven Ross, Chairman of Warner Communications, Inc. Ross was presented as a man with business experience in corporate acquisitions, and thus qualified as an "expert" to testify at the hearing. No prior notice was given to defendants of Ross' appearance, despite some months of preparation for expert testimony and agreement between the parties to disclose to each other the identity and opinions of all experts to be used. Ross is a long-time client of plaintiff's counsel in the field of corporate acquisitions and thus his availability must have been known and anticipated for some time. Ross' testimony was confined to the area of his alleged "expertise"; he voiced no opinion as to the value, fair or otherwise, of Piper other than to announce his faith in Nicholas Salgo's (the Chairman of Bangor Punta) judgment.

At the initial trial, defendant's sole expert was Clifford Fitzgerald, vice-president and head of the Corporate Finance Department of Drexel Firestone, Inc. He testified extensively on the subject of the fair market value, the value of control, its elements, how to estimate a premium for control, and the appraisal value of Piper stock. In this Court's earlier opinion, Fitzgerald's testimony was characterized as "careful and well-documented" and "persuasive in the main". 337 F. Supp. at 1153, n.11. Fitzgerald had testified at that trial that the Piper stock's fair market value was $42.10 per share on September 5, 1969 and he explained in detail how this was arrived at. Each of the experts at the post-trial hearing on damages referred particularly to Fitzgerald's testimony, attempting to harmonize or compare their conclusions with Fitzgerald's. Their reliance on the Fitzgerald analysis in ascertaining fair market value -- which utilized the same basic formula of earnings multiplied by an appropriate capitalization rate -- reinforces this Court's previous impression of the reliability of Fitzgerald's conclusions.

At the post-trial hearing on damages, defendants presented the record of the Fitzgerald testimony and two additional expert witnesses. The first, Aubrey Lank, is a Delaware lawyer with experience as a Court-appointed appraiser, expert witness and attorney in statutory appraisal proceedings under Delaware law. Lank quantified defendants' statutory appraisal theory of damages. He also computed Piper's fair market value in September 1969 as one element of the appraisal process; his analysis resulted in a fair market value of $52.50 per share and an appraisal value of $49.46.

Defendants' second hearing expert was Donald Gant, a partner of Goldman, Sachs & Co., whose function for 20 years has been to give advice in corporate financing, to carry out public underwritings, private financings, mergers and acquisitions and to do evaluations of securities. While Gant's preparation for the hearing was concentrated on the price CC would have realized from a public distribution of its Piper stock, he also computed the fair market value of the Piper stock on the relevant date at between $44 and $46 per share. Gant's oral testimony further reflected the pragmatic business realities facing a contestant engaged in the titanic struggle

portrayed in this case; his analysis utilized realistic financial appraisals rather than abstract academic or statistical notions.

Thus, the figures on fair market value ranged from Murray's strikingly low estimate of $36.75 to Rosenkranz's $58 per share -- a spread of some $20 per share. Ignoring the two extremes, however, the spread is reduced considerably, i.e., to $10 per share (from Fitzgerald's $42.10 to Lank's $52.50).

Selecting the appropriate figure involves, obviously, a certain amount of balancing and estimation. As noted, all the experts followed the pattern of reconstructing what each considered to be the appropriate earnings figure for Piper and then applying a "multiplier" to represent the price/earnings ratio. To derive the proper factor, some experts utilized information relative to Piper's competitors, Cessna and Beech; others gave more weight to the Standard & Poor's general average; and still others relied mainly on Piper's own past performance.

Choosing one expert's figure over another on this issue would be to reject one accepted technique while accepting the other. The more prudent course would simply be to average all the computations, an approach advocated by defendants in their post-trial memorandum. See also Note, Developments in the Law-Damages, 61 Harv. L. Rev. 113, 125 (1947). Averaging all the experts yields a fair market value figure of $47.73; discarding the highest and lowest figures and averaging the rest results in a value of $47.90. Thus, under all the facts and circumstances, a round figure of $48. per share seems a reasonable and justifiable estimate of the fair market value per share of Piper stock as of September 5, 1969.

II. The Value of Chris-Craft's Opportunity to Gain Control

Quantifying the premium, if any, representing the value of CC's opportunity to gain control of Piper while holding a hypothetical 42% to 37% "lead" entails, of necessity, a determination of the value of ultimate control of Piper to CC.

"The phenomenon of 'control' is perhaps the most important single fact in the American corporate System." Berle, "'Control' in Corporate Law", 58 Columbia L. Rev. 1212 (1958). Control has been referred to by one commentator as "the complexus of duties and rights possessed by the custodian of another's goods." Bayne, "A Philosophy of Corporate Control", 112 U. Pa. L. Rev. 22, 29 (1963). The law has never "advertently" defined control in a manner that allows one to reduce it to a money value. (Ibid.) The securities laws refer redundantly to the power to exercise a controlling influence. Despite the amorphous intangible nature of "control", both parties have argued their positions as if they are assuming that "control" is ipso facto a valuable personal asset that can be bought and --- more importantly -- sold or otherwise converted into actual financial gain by its "owner". The control position, however, cannot be viewed so narrowly.

To be sure, private parties have long paid substantial premiums for control positions, and each of the experts who testified before the Court so acknowledged.[12/]

12/ "[A] controlling block of stock has greater sale value than a small lot." Perlman v. Feldmann, 219 F.2d 173, 180 (2d Cir. 1955)(Swan, J., dissenting).

However, the "value" of having control is not necessarily the price paid in excess of the fair market value of the stock purchased. Control represents different values to different holders. The value of control is, if nothing else, subjective; indeed, "[c]ontrol may be sought for a combination of reasons, some of them so subjective that the buyers may themselves be uncertain regarding their basic intentions." Hill, "The Sale of Controlling Shares", 70 Harv. L. Rev. 986, 1010 (1957). Plaintiff's witness Steven Ross added a literary touch by saying "control gives power over your own destiny" (Tr. 612); but the value of this "power" still lies in the realm of subjective judgment (Tr. 631). Perhaps most importantly, the value of control varies with the purposes to which control will be put. See generally Bayne, "The Investment Value of Control Stock", 54 Minn. L. Rev. 1265(1970). Examples of this differing subjective value of control are easily imagined. Thus, for instance, control of a motor company might be worth far more to another motor company than it would be to a large bank; a motor company might be able immediately to integrate the "target's" operations, and apply its own marketing

and management expertise to its acquisition. The bank, on the other hand, would have to expend further substantial sums in acquiring this expertise -- either from inside the company or from without -- and thus make a much larger investment in the motor company to be acquired. The larger the cost of the investment necessary, assuming a constant return under optimum conditions, the smaller the percentage of that return on the investment, and hence the lower the value of control.

Control, furthermore, has a variety of other measurable values, ranging from the crucially important to the banally mundane. Thus, for example, control carries with it the ability to appoint officials and dictate managerial policy. See, e.g., McClure v. Law, 161 N.Y. 78 (1899); Honigman v. Green Giant Co., 309 F. 2d 667 (8th Cir. 1962). Other advantages of control include the opportunity to liquidate the company, to secure a capital gain, arrange mergers (as recognized in the instant case by the Court of Appeals) and consolidations advantageous to the controlling persons' outside interests, to cut or eliminate dividends to avoid personal

income taxes, to grant stock options, and the like. Bayne, "A Philosophy of Corporate Control", 112 U. Pa. L. Rev. 22, 52, n.103 (1963). In short:

> The corporate assets at control's disposal for the performance of managerial duties range from the picayune perquisites of the office -- yachts, clubs, secretaries, and chauffeurs -- to the determination of important policies of purchase and sale, of initiation of litigation and declaration of dividends. Id. at 49.

Defendant's expert Fitzgerald, testifying at the initial trial, accurately surveyed the elements in valuing control, noting that the holder could derive the benefits of equity financial reporting, the ability to direct the business and its policies, the ability to merge or sell assets, declare dividends, sell stock, obtain counter-seasonal or counter-cyclical effects and the prospects of an enhancement in a price/earnings ratio of the acquirer. (Trial Tr. 1536-42.)[13/]

13/ To be sure Fitzgerald concluded that none of these elements gave any added value to the control position in this particular case, see infra pp. 43-4.

But it is equally clear that the controlling person may not baldly misappropriate this power for his own interests at the expense of the corporation; his primary responsibility is to the corporation itself, for the controlling party is merely a custodian of the powers of his office. cf. Porter v. Healy, 244 Pa. 427, 91 Atl. 428 (1914); Commonwealth Title Ins. & Trust Co. v. Seltzer, 227 Pa. 410, 76 Atl. 77 (1910).[14/] And unless that custodian can somehow convert that control, and thus enhance the value of his investment through utilization of the control position, that position is -- standing alone -- not worth any premium. See Bayne, "The Investment Value of Control Stock",54 Minn.L.Rev. 1265, 1281-88 (1970).

In the case presently before the Court, it is not at all clear that CC entered the contest to gain control of Piper and it is even less apparent that CC could have enhanced its investment by gaining control. The timing

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14/ "The majority has the right to control; but when it does so, it occupies a fiduciary relation toward the minority, as much so as the corporation itself or its officers and directors." Southern Pacific Co. v. Bogert, 250 U.S. 483, 487-8 (1919). See also Berle,"'Control' in Corporate Law", 58 Columbia L.Rev. 1212, 1222-4 (1958).

of CC's entrance into the marketplace in search of Piper stock, as well as the other evidence adduced both at the initial trial and on the hearing on damages strongly suggest that CC desired and speculated for only a profitable take-out of its Piper investment. Its commitment to seeking long term investment in and control of Piper came later, compulsively.

Thus, for example, CC's January tender offer was for only 300,000 shares, at a time when it is manifest that CC needed approximately 500,000 shares for control of Piper. CC's former Vice President, C. Leonard Gordon, stated at the initial trial that CC did not want to give the impression that it was committing itself to acquire a majority of the stock because it was not in fact committing itself; that its intention in making this limited tender offer was precisely "to be in a position to sell", "if we could see it was advantageous to get out or necessary to do so"; CC had not arranged for financing necessary to go for control. CC's "Schedule 13", filed with the Securities and Exchange Commission in compliance with the terms of the Williams Act regulating tender offers, while stating

that CC was seeking to acquire the Piper shares with a "view" towards control of Piper -- used language calculated to leave CC with the option of selling out, according to Gordon (Trial Tr. 372).[15/]

More generally, CC's President Herbert Siegel who initiated the Piper purchases frankly acknowledged his unfamiliarity with the aviation business, while insisting that Piper would complement CC's business (Trial Tr. 512-514). Siegel's own personal history of numerous tenders and aborted bids for other corporations failed to result in any long-term interest in his targets except on one occasion -- the acquisition of CC itself. Piper was the only situation in the last several years when Siegel did not sell out after strong

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15/ Indeed, CC even sought a buy-out from BP of CC's Piper shares through the medium of BP's own tender offer. (Trial Tr. 398). However, such a tender would have placed CC afoul of the statutory prohibitions against "short-swing" purchases and sales, 15 U.S.C. §78p(b), and BP refused to extend the time of its tender offer to remove that obstacle from CC's path. Gordon stated that CC would have tendered the shares to BP if BP had extended the offering time to accommodate CC's problem. (Trial Tr. 398, 421).

purchasing took place and before taking a permanent stance in the target (Trial Tr. 522). The foregoing circumstances bear significantly on the value of ultimate control of Piper to CC.

The value of control to CC was directly related to "the totality of the abilities the new man brings to the firm." Bayne, "The Investment Value of Control Stock" 54 Minn. L. Rev. 1265, 1282 (1970). There has been no showing that the Chris-Craft regime could have in any way altered or improved the Piper picture. If anything, the major value of the control position to CC appeared to be solely as a fulcrum for later sale. To be sure, ultimate control of Piper could well have resulted in various forms of improvement of CC's balance sheet, but such amorphous enhancements are incapable of reasonable valuation. Furthermore, to the extent that CC sought control of Piper for the purpose of being able to integrate the Piper earnings with the CC earnings, that result was accomplished even absent control by an accounting methods change in 1970 which permitted such accounting. (Trial Tr. 1538). Thus, in the long run, CC lost nothing in this

regard when it lost the fight for a majority of the stock.

It is significant as well to note that the Piper family and management were, to say the least, staunchly opposed to the CC "invasion". Had CC achieved ultimate control, therefore, the prize would have embraced resistant and difficult personalities and CC would have been forced to undertake a wholesale -- and expensive -- replacement and reorganization of the Piper corporate structure. A formidable task by any standard, such a course would have been especially doubtful in light of CC's acknowledged attraction to the Piper name and reputation. (Trial Tr. 513). At all events, such a significant future financial and psychological expense is a substantial discount factor to be applied to the ultimate value of control of Piper to CC.

In light of the inability to affix a value to CC's successful quest for control of Piper (and hence a value to CC for its opportunity to gain that control), the only accurate way of measuring the value of CC's lead position is to determine what CC's position on September 5 was

worth to a hypothetical reasonable purchaser.[16/]

But even if CC could have realized the full value of its "plurality position" by a sale, it is not at all clear that the premium, if any, realized thereby could be properly retained by CC. In the atmosphere of recently decided cases, especially where a vocal opposition exists, the exercise of control is bound to be seriously hedged by restrictions protective of minority interests. Cf. Perlman v. Feldmann, 219 F.2d 173 (2d Cir. 1955). See also Porter v. Healy, 244 Pa. 427, 91 Atl. 428 (1914). But see Essex Universal v. Yates, 305 F.2d 572 (2d Cir. 1962). It is clear here that the excess amounts paid by both CC and BP in August of 1969 were, in effect, "anticipation" premiums; the contestants, in other words, were paying prices with an inflation factor that hopefully, in the end, would be repayed by the traditional "control" emoluments to the victorious bidder. However, between realization of of control and the realization of repayment of the premium

16/ CC correctly points out that the actual existence of such a purchaser is immaterial; rather, the "purchaser" must be constructed to determine what value, if any, is to be ascribed to CC's lead position on September 5.

paid for control are many hazards. Certainly, these factors affect not only what uses control can be put to but also the market value of the control and any attempt to sell it. A contestant who, in the words of expert Wahrsager, allegedly had a "99% chance of gaining control" if it led by 42-37 (Tr. 30) could not, under equitable concepts, sell his plurality position without accountability if the sale of such a position was to deliver control or use it to benefit himself at the minority's expense.

For present purposes, it is enough to note that while the "hypothetical purchaser" method is the only way of determining the value of CC's plurality position before BP acquired 51%, such a method raises substantial questions as to whether the existence of the plurality would have added materially to the per share fair market value at the time -- absent the plurality.[17/]

17/ It goes without saying that any sale of CC's plurality position in August or September, furthermore, would have exposed CC to the pitfalls of the short-swing statutes that it so desperately sought to avoid. 15 U.S.C. §78p(b); Securities Exchange Act §16(b). Thus CC was between the Scylla of §16(b) and the Charibdis of equitable limitations on the sale or use of control.

Similarly, a number of other factors tend to reduce the "premium" that CC might have expected to realize. CC's hypothetical lead cannot be viewed in a vacuum; its opponent, BP, had exhibited extraordinary tenacity, and quite clearly had committed itself to use any and every resource available to win the contest. Furthermore, BP's energies were fully focused towards control of Piper, for it had contractually committed itself to the Piper family to use its "best efforts" to obtain control. It is thus doubtful that BP would have "dropped out" of the fight, even faced with a five-point deficit.[18/] The likelihood of any third-party expending enormous sums of cash to take over CC's plurality position

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18/ It should be remembered that BP entered the contest with CC, in effect, holding a 33 percentage-point lead. The expert testimony as to the "statistical probability" of the leader going on to victory is sufficiently doubtful as a matter of business experience and common sense in a situation where there is a bidder with greater resources at his command.

just for the privilege of continuing the dogfight with BP is unrealistic and slim at best; defendants' expert Mr. Gant, in particular, pointed out that unlikelihood in his testimony (Tr. 502).

Furthermore, CC's opponent was not merely BP -- it was Piper itself. The Piper family and management had long since displayed its adamant opposition to any takeover by CC. The value of having management on BP's side cannot be minimized, and that is a value that BP alone possessed. Moreover, the "winner" of the contest, whoever it might be, knew full well that it would be faced with a large and highly vocal minority opposition -- hardly the ideal corporate situation to maximize the potentialities of control. It goes without saying that whatever majority control is worth where the balance of the ownership is scattered and uncoordinated, a majority position is worth less to a third party where a large minority holding exists. This is particularly so where, as here, the rival interests have displayed a willingness to litigate every issue and there is the capacity to force a costly appraisal proceeding to forestall or hamper the exercise of control.

In short, even assuming arguendo that CC's "lead" position possessed a value that was personal to CC and did not already belong to Piper, as in the Perlman case, the value of that position could be substantially less than the value of the opportunity to gain control in more normal circumstances. The control fight still raged; CC, even with a lead of 42-37, could not be sure of the outcome and the value of control to a third party if it was indeed achieved was, in any case, questionable. The premium value of CC's hypothetical lead was depreciated accordingly.

III. Quantifying the Premium

There was widespread disagreement among the experts as to the dollar value of CC's plurality position.[19/] Mr. Wahrsager testified that the ultimate value of control of CC would lift the value of CC's plurality position by 40% above the fair market value, to $72 per share; that figure, he testified, represented what he thought a third-party would have paid for the lead

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19/ All agreed, however, that the premium given either a 41-31 or 42-37 lead would be identical.

position. (Tr. 9, 32, 62a). Thus, Wahrsager valued the plurality premium at approximately $20 per share, the difference between what he considered to be the fair market value of $52 per share, and the value of CC's plurality position of $72 per share. The economic climate at the time seems not to have influenced Wahrsager's estimations of value. He testified that in September 1969 a pronounced downward market movement started to become manifest until a real collapse in security prices occurred in the summer of 1970. He did not forsee this decline, his statistical studies did not tell him it was coming and he did not take this deterioration into consideration in his valuations. Furthermore, his $20 figure can be taken as little more than an abstract creation. No one had told Wahrsager what value enhancement CC could derive from its control venture nor did he have any objective basis for estimating dollar-wise what benefit CC could reasonably have expected from being in a position to manage Piper and its dividend policies.

The Court has searched vainly in the record for specific identification of the advantages of control to CC reducible to money value.

Professor Murray's calculation, like his fair market value computation, was somewhat more obscure; he persistently eschewed assigning any premium to CC for its plurality position until a leading question finally evoked his acquiescence that such a premium could be as much as 40% over the fair market value (Tr. 167-8). Murray stated that the contestants for control undoubtedly felt that under their management respectively they could make changes in the hope to enhance Piper's earning power. But he did not attempt to identify any of the changes or evaluate them or put any dollar figures on them. He said that there was no way that he could read the minds of the decision makers to figure out what their expectations might be.

Mr. Rosenkranz likewise refrained from assigning any premium to CC's block; he said, "It was not part of our assignment to try to assign a premium based on the hypothesis that Chris Craft had a plurality of the Piper shares." And while his testimony vacillated, Rosenkranz

explicitly stated at several points that he would place no premium on the lead position because of the ongoing uncertainty of victory even when CC held 41% of the Piper stock despite the prognostications of plaintiff's statisticians to the contrary. (Tr. 267, 306). To be sure, Rosenkranz at times did acknowledge that a lead position could bring some premium (Tr. 228, 309, 320), but nowhere in his testimony did he attempt to assign a premium representing that factor (Tr. 309). It was Mr. Rosenkranz' testimony that the power to choose management cannot be quantified and that there is no way of evaluating the possibility of increasing earnings in the future so as to determine enhancement in value inuring from the acquisition of control. (Tr. 331, 332).

Thus, to Mr. Rosenkranz the "value" of CC's plurality position was simply $58 per share (Tr. 306, 320).

At the initial trial, defendants' expert Mr. Fitzgerald fully and accurately analyzed the various components entering into the assignment of a control premium, and concluded that had CC gained a majority of the Piper stock, he would still assign no premium to its position; in his words, a control premium "would not seem to be justified or warranted", (Trial Tr. 1536) since the sole measurable value of control herein would be the utilization of the equity accounting method, and such method became available to holders of 20% or more of a company's stock. See supra pg. 33. Despite repeated cross-examination on the subject, Fitzgerald continued to insist that no premium was warranted, no matter which contestant ultimately gained majority ownership:

> Q: As you sit here on this witness stand as an investment banker, can you tell me whether in your opinion a reasonable buyer would be willing today to pay as much per share for Chris-Craft's 42 per cent of Piper as for Bangor Punta's 51 per cent?

A: That is our testimony and that is what I am saying here sitting in this witness box. (Trial Tr. 1585)

Fitzgerald realistically noted that control in the context of the CC - BP battle would be worth very little:

[I]t is our view that in any situation that would be litigious or hostile it would be very difficult to exercise control and to make reasonable business gambles, as would be the case when you were not being constantly second guessed. (Trial Tr. 1539).

Accordingly, Fitzgerald concluded that there would be no premium attached to the ultimate control position of Piper.

Mr. Gant, testifying for defendants at the post trial hearing, stated that CC could readily dispose of its Piper shares only by way of a public offering in which it could be expected to realize $43 per share. Obviously, any premium value would be dissipated in such a public offering (Tr. 431). Nonetheless, as was the case with Fitzgerald, Gant perceptively and persuasively analyzed the components of that plurality premium; he testified that a party seeking control of Piper where there was no concentrated opposition would possibly pay a 20% premium (Tr. 520-1) -- half the figure named by Wahrsager and

Murray. However, Gant, like Fitzgerald, accurately recognized that the situation in the present case was far different, since two large holders were bitterly fighting for control. As previously noted, the counter-balancing block greatly dilutes the value of control, and hence reduces any control premium. In consequence, Gant testified that he too thought there would be no premium value attached to CC's lead of 42% to 37% (Tr. 498), that indeed any third-party stepping into the "messy and complicated" fight might have wanted a discount (Tr. 501-2), and that at most a premium figure between 5% and 10% over fair market value might be garnered for the ultimate control position [not for merely the opportunity to gain control]. (Tr. 521). Gant defended his analysis as follows:

> I am describing an atmosphere in which the holder of the majority has a very vocal minority stockholder who is contesting his position and where the board is divided and where litigation proceeds, [and] that is not an atmosphere that most people want to get into and for which they will pay a premium. (Tr. 521).

Gant together with Fitzgerald emerged as the experts on whom the most reliance could be placed in reaching the

damages to be ascertained here; Gant together with Fitzgerald gave the most acceptable and convincing guidance on the issues.

Gant was the only expert to directly explain and quantify the premium that is at the base of this Court's determination, i.e., the premium that exists in a large minority block when that is counterbalanced by another block almost as large that stands in the way of full harmonious utilization of ultimate control if and when that may be acquired.

The Court has weighed all the relevant factors indicated in the testimony and reports of the experts and the exhibits introduced at the hearing. The Court has had the opportunity to see and hear the witnesses and to appraise their evidence, its potency and believability in the light of all the facts and circumstances of the trial record and the record of the hearing on the relief to be considered. The Court has appraised the reduction in the appraisal value of CC's Piper holdings attributable to BP's taking a majority position and reducing CC to a minority position. That reduction the Court finds

to be $2.40 per share which is the 5% premium above fair market value that the Court finds to have been lodged in a 42% holding of Piper that was erased when BP obtained a majority with illegal purchases of stock on September 5, 1969. These findings reflect weighing of the inflating and deflating factors heretofore indicated upon the range of values of all relevant components.

The evidence persuasively established that actual majority control was worth between 5% and 10% above fair market value of Piper stock in the circumstances of this case with a block of 37% or 42% of the total capital opposing the majority. Certainly then, the opportunity (speculative at best) of gaining a majority from a 42% plurality is generously valued at 5% above fair value of the stock, in such circumstances.

Accordingly, the total damages to be awarded to CC are $1,673,988. ($2.40 times the total number of shares held by

CC on September 5, 1969, (697, 495).[20/]

IV. Injunction

The Court of Appeals ordered this Court to "include in its judgment an injunctive provision barring BP from voting for a period of at least 5 years the Piper shares it obtained through the unlawful May cash purchases and those it obtained through its exchange offer." 480 F.2d at 380.

Injunctions are extraordinary legal remedies; they are granted sparingly, and granted only under terms which insure the protection of all parties -- including the party enjoined. See Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas R.R. Co., 363 U.S. 528 (1960); Galella v. Onassis, 487 F.2d 986 (2d Cir. 1973); Greater Iowa Corp. v. McLendon, 378 F.2d 783 (8th Cir. 1967); New York, Chicago & St. Louis R.R. Co. v. Brotherhood of Locomotive

20/ The Court of Appeals held that CC was under no duty to withdraw from the contest prior to September 5 and thus mitigate damages (480 F.2d at 376), despite the admission by CC's officers and experts that the fight was "lost" well prior to that date. (Tr. 30, 264-5, 681, 693, Trial Tr. 459).

Firemen & Engineers, 358 F.2d 464 (6th Cir. 1966). Injunctions must therefore be carefully fashioned to fit the particular facts presented. As one Court so aptly put it:

> An injunction decree should conform to the requirements of the case; it should give relief from the wrong committed but it should not be so broad as to inflict an unwarranted injury on the defendant. (Servisco v. Morreale, 312 F. Supp. 103 (E.D. La. 1970).) See also Goldberg v. Trakas, 206 F. Supp. 867 (E.D.S.C. 1962).

The power of the District Court to attach protective conditions, if warranted, to an injunctive decree is too clear to admit of serious dispute. See, e.g., Lemon v. Kurtzman, 411 U.S. 192 (1973); Salsbury v. United States, 356 F.2d 822 (D.C. Cir. 1966); J.M. Fields of Anderson, Inc. v. Kroger Co., 330 F.2d 686 (5th Cir. 1964); Professional Sports, Ltd. v. Virginia Squires Basketball Club, 373 F. Supp. 946 (W.D. Tex. 1974); Puerto Rico International Airlines, Inc. v. International Association of Machinists & Aerospace Workers, 366 F. Supp. 646 (D. Puerto Rico 1973). And nowhere are the broad powers of the Court with respect to injunctions clearer than in cases involving federal securities law violations. See J.I. Case Co. v. Borak,

377 U.S. 426 (1964); S.E.C. v. Golconda Mining Co., 327 F. Supp. 257 (S.D.N.Y. 1971).

Furthermore, it is perfectly appropriate for the Court, when necessary, to impose terms and conditions upon the party at whose instance it proposes to act. Inland Steel Co. v. United States, 306 U.S. 153, 156 (1939); Meyers v. Block, 120 U.S. 206, 214 (1887); Russell v. Farley, 105 U.S. 433, 438 (1882) (noting that such power has been recognized and exercised by courts "from time immemorial"). See also Burford v. Sun Oil, 319 U.S. 315, 333 n.29 (1943).

In short, in perhaps no other instance is the District Court more clearly given the power -- and indeed the duty -- to mold and shape the relief to fit the circumstances before it.

> [E]quitable remedies are a special blend of what is necessary, what is fair, and what is workable ... In equity, as nowhere else, courts eschew rigid absolutes and look to the practical realities and necessities inescapably involved in reconciling competing interests.... Lemon v. Kurtzman, supra, at 200-201 (Burger, Ch.J.).

The situation presently before the Court calls

for precisely the sort of customized relief envisioned by the cases cited above. BP must be deprived of unfairly benefitting from its unlawful stock purchases, yet CC must not be fortuitiously placed in a position where it will be able to alter BP's investment beyond the life of the Court-ordered injunction. The Court of Appeals squarely refused to hold that CC would have gained control of Piper absent BP's conduct. This Court's injunction therefore should not award CC a benefit to which it would not otherwise be entitled. It is clear that the damage awarded fully compensates CC for the interference with its opportunity to gain control of Piper; the injunction is aimed, in contrast, at enjoining BP, not further rewarding CC.[21/]

Events since September of 1969 and particularly during 1974 make special fashioning of this injunction particularly appropriate. For here, it is undisputed

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21/ To be sure, CC will probably take management "control" of Piper during the injunction period, and such a shift is not in conflict with the Court of Appeals' mandate. CC may thus, if it be so advised, alter management policies during the injunction period.

that both CC and BP have recently (perhaps with an eye to the ultimate resolution of this lawsuit) resumed purchasing Piper stock on the market. As of June 7, 1974, the parties owned the following Piper shares, out of 1,644,790 shares outstanding as compared with their respective investment on September 5, 1969:

	1969	1974
BP	832,706	857,921
CC	697,495	708,300

Therefore, an injunction prohibiting BP from voting that portion of its Piper shares that were unlawfully acquired, places CC in the position of having 708,300 of the 1,413,788 shares of Piper eligible to vote, or more than 50%. Clearly this would lift CC into benefits which its position in 1969 could not achieve by according to it the same powers of permanently altering the minority investments through merger, issuance of new stock, recapitalization, dividend policies, or the like.[22/]

22/ The stock ownership of CC to the present date has never provided it with enough votes at any time to elect more than three of an eight man board or four of a ten man board. And even if BP could not have voted the illegally acquired shares (231,002) and the outstanding shares entitled to vote are reduced by that amount, CC through September 5, 1969, at no time had enough shares to elect a majority of the board nor did it have the power to vote a merger of Piper.

Unless restricted appropriately, CC would thereby be able to convert the "temporary" injunction ordered by the Court of Appeals into a permanent prize. If the Court of Appeals had desired to grant such a license to CC, the injunction ordered would have been permanent, not temporary. It is, therefore, against this background that the injunction must be fashioned -- keeping in mind the Court of Appeals' caveat that divestiture of the questioned ownership was not required and that the control battle should not be reopened. 480 F.2d at 379.

The proper balance can best be achieved by simply rolling back the calendar to September 5, 1969, much as was done for the damage inquiry. The parties should revert to their status as on that date, with BP's illegally purchased shares enjoined from voting the stock for a lengthy period. Concurrently, the corporate status of Piper should be likewise frozen as at that date for the period of the injunction. The charter and by-laws of Piper shall revert to the form and content as they existed on September 4, 1969 and shall unless otherwise ordered by the Court, continue in that form and content during the period of the injunction granted hereby.

Similarly, unless otherwise ordered, no stock, rights, options or other devices capable of expansion of capital may be issued by the Corporation or from the Piper treasury during the injunction to alter the September configuration and no merger, dissolution, liquidation or redemption of securities shall be made; and no debt or obligation, not in the ordinary course of business shall be incurred or placed; except in accordance with the laws of Pennsylvania and pursuant to the charter and by-laws as constituted on September 4, 1969.

The period of this injunction was determined by the Court of Appeals to be not less than five years. The parties have operated as a de facto regency -- albeit reluctantly -- for some five years since the inception of this lawsuit. For better or worse, BP, while clearly exerting its majority influence in certain situations, has been stifled in fact from exercising that control in others. Undoubtedly, the spectre of a large and vocal minority block constricted BP (and perhaps, during the injunction period, CC) from acting as it [or they] would have without such a watchdog. To that extent at least, BP has already been "enjoined" in fact from utilizing

the full benefits of its majority position. Nonetheless, the Court cannot agree with BP's contention that the injunction period should be deemed satisfied. Therefore, the period of the injunction ordered by this Court should commence with the filing of the decree on this opinion for the five years recommended.

In addition, this Court will retain jurisdiction during the pendency of the injunction in order to remold or modify the injunction if such a course becomes necessary or appropriate due to any change in circumstances actual or prospective. See American Optical Co. v. Rayex Corp., 291 F. Supp. 502 (S.D.N.Y. 1967), aff'd., 394 F.2d 155 (2d Cir.), cert. denied, 393 U.S. 835 (1968); In re Certain Carriers, etc., 241 F. Supp. 1004 (D.D.C. 1965).

V. Other Relief

Plaintiff has, in addition, requested that the interest charges it has borne on loans which financed its Piper investment be awarded to it as consequential damages. Plaintiff contends that its "locked-in" position has precluded the possibility of any escape from Piper,

and thus such interest charges are properly recoverable.

There has been no showing that CC has been "locked-in" so that sale of its Piper stock has been impossible. Indeed, the proof adduced at the present hearing was directed precisely at determining the discount due to the minority position. The cost of the use of credit or margin to acquire stock is not a proper element of damage to a purchaser's interest. Moreover, an award of such interest herein would stretch the Court of Appeals' mandate beyond its properly intended limits. Consequential damages are awarded only upon a clear showing of causal connection with the misconduct and the consequence claimed. Zeller v. Bogue Electric Mfg. Corp., 476 F.2d 795 (2d Cir.), cert. denied, 414 U.S. 908 (1973). Such a showing has not been and cannot be made here for purposes of an award of interest to CC on the unpaid portion of the purchase price of the Piper stock acquired by CC.

Plaintiff also seeks prejudgment interest on the recovery from the date of the wrong. Where, as here, a claim for relief is federally created, the allowance of

interest is to be decided by federal law. See Note, Interest on Judgments in the Federal Courts, 64 Yale L.J. 1019, 1040 (1955)(hereafter cited as "Note"). See also Perkins v. Standard Oil Co. of California, 487 F.2d 672, 675 (9th Cir. 1973); Briggs v. Pennsylvania R.R. Co., 164 F.2d 21, 22 (2d Cir. 1947), affirmed without consideration of this point, 334 U.S. 304 (1948); Murphy v. Lehigh Valley R.R. Co., 63 F. Supp. 928, 929-930 (E.D.N.Y. 1945), modified, 158 F.2d 481 (2d Cir. 1946). State statutes in respect of prejudgment interest, e.g., N.Y.C.P.L.R. §5001(b) (McKinney's Supp. 1973), are thus inapplicable. See Note, supra, at 1040.

Prejudgment interest may be awarded where provision therefor is made in the federal statute which creates the federal remedy. See 10 Wright & Miller Federal Practice and Procedure §2664 (1973). In the absence of a specific statute, the operative statute is 28 U.S.C. §1961. See Note, supra at 1040. The federal securities laws are silent in respect of interest. Section 1961 provides, in pertinent part, as follows:

> Interest shall be allowed on any money judgment in a civil case recovered in a district court.... Such interest shall be calculated from the date of the entry of the judgment, at the rate allowed by State law.

Thus, the statutory authority provides only for interest on a money judgment, and thus "would seem to exclude the inference that interest should be allowed upon verdicts before judgment." Massachusetts Benefit Assn. v. Miles, 137 U.S. 689, 691 (1891). But see Louisiana & Arkansas Ry. Co. v. Export Drum Co., 359 F.2d 311, 317 (5th Cir. 1966)(§1961 inapplicable to the question of whether prejudgment interest is a proper element of damages).

Nonetheless, a number of Courts which have considered the question of prejudgment interest in federal securities cases have ruled that the absence of statutory authority other than §1961 has left the award of equitable prejudgment interest to the discretion of the Court, to be decided by balancing the equities and weighing notions of fairness to the parties. See, e.g., Blau v. Lehman, 368 U.S. 403 (1962); Wolf v. Frank, 477 F.2d 467 (5th Cir. 1973), cert. denied, 414 U.S. 975 (1973), rehearing denied, 414 U.S. 1104 (1973); Wessel v. Buhler, 437 F.2d 279

(9th Cir. 1971); Norte & Co. v. Huffines, 416 F.2d 1189 (2d Cir. 1969), cert. denied sub nom. Muscat v. Norte & Co., 397 U.S. 965 (1970); Spector v. Transamerica Corp., 135 F. Supp. 17[illegible] Del. 1955), affirmed, 235 F.2d 369 [illegible] Goldstein v. Scudder & German, 346 F. Supp. 443 (S[illegible]972); Ross v. Licht, 263 F. Supp. 395 (S.D.N.Y. 1967); Collier v. Granger, 258 F. Supp. 717 (S.D.N.Y. 1966); Pappas v. Moss, 257 F. Supp. 345 (D. N.J. 1966), rev'd. other grounds, 393 F.2d 865 (3rd Cir. 1968); Perfect Photo, Inc. v. Grabb, 205 F. Supp. 569 (E.D. Pa. 1962). Cf. Board of Commissioners of Jackson County v. United States, 308 U.S. 343, 352 (1939) ("[I]nterest is not recovered according to a rigid theory of compensation for money withheld, but is given in response to considerations of fairness.").

The foregoing decisions have not adverted to the [illegible] Erie R.R. v. Tompkins, 304 U.S. 64 (1938) had any significant impact on notions of the common law that re[illegible]ed discretionary power to increase damages by interest awards or the effect if any of the post-Erie reenactment of 28 U.S.C. §1961, which squarely addressed the question of interest.

Interest on the obligations created by the securities laws is or is not payable depending upon the purpose of the statutory enactment as applied and upon principles of equity. In equity, the allowance of interest supplies a means of compensating a creditor for loss of use of his money. Thus, recoveries of one's own money through claims bottomed on Sections 12 and 17 of the '33 Act and 10(b) of the '34 Act readily fall within a debtor-creditor relationship; and equity may quite properly supply prejudgment interest awards in such cases.

However, where the statute is used to vindicate the prophylactic purposes of the law and a private recovery is therefore allowed to a litigant in the posture of this plaintiff, there is a question whether the equitable principle should apply. If the allowance of interest on such an obligation "would serve only to increase the penalty and not to compensate for loss of use of money owing a creditor" (United States v. United Drill & Tool Corp., 183 F.2d 998, 1000 D.C. Cir. 1950), allowance of interest becomes questionable.

No instructions with respect to allowance of interest were included in the mandate.[23/] However, the basis for and object of the damage award found by the Court of Appeals seem intended to carry the addition of prejudgment interest on the recovery as quantified herein. Consequently, such interest is allowed and shall be computed on the recovery from September 5, 1969 at the legal rate and included in the decree to be entered.

Finally, plaintiff has requested an award of attorney's fees, arguing that a public rather than a selfish interest has been served by this litigation. See SEC v. Capital Counselors, Inc., 378 F. Supp. 224 (S.D.N.Y. 1974). If anything is clear concerning this lengthy and bitterly fought litigation, it is that service of the public interest was not CC's motivation and any such service has been wholly incidental and has

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23/ The entire problem of interest becomes obviated for a District Court when Rule 37 of the Federal Rules of Appellate Procedure is utilized. That provides that where the District Court's judgment is reversed, the mandate "shall contain instructions with respect to allowance of interest."

been amply satisfied by the damages awarded to CC. The law in this country has not yet reached the point of rewarding victorious litigants with counsel fees in the circumstances here present; at all events, such an award in this case is not warranted and is denied.

Costs are awarded to the plaintiff to be taxed by the Clerk.

The foregoing shall constitute the findings of fact and conclusions of law required by Rule 52(a) Fed. R. Civ. P.

The parties may submit a decree accordingly conforming with Rule 54(a) Fed. R. Civ. P. for consideration by the Court.

SO ORDERED.

November 6, 1974

Milton Pollack
U.S. District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRIS-CRAFT INDUSTRIES, INC.	:	
Plaintiff,	:	
v.	:	
PIPER AIRCRAFT CORPORATION, HOWARD PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICHOLAS M. SALGO, DAVID W. WALLACE, and THE FIRST BOSTON CORPORATION,	:	69 CIV. 2227(MP)
Defendants.	:	

ERRATA FOR OPINION

Dated: November 6, 1974

MILTON POLLACK, District Judge.

The following changes are made in the opinion filed herein on November 6, 1974:

Page 15 — Six lines from bottom, substitute "conjecture" for "conjuries".

Page 24 — Add sentence at the end of page

"Thereafter, each expert took a separate route to his ultimate figure."

Page 31 — Line 7, substitute "under compulsion" for "compulsively".

Line 9, substitute "was" for "is".

Last line, insert after "tender offers"

"15 U.S.C. §78n (d-f)" set off by commas.

Page 32 — Line 11, substitute "demonstrate" for "result in".

Page 34 — Eighth line from top, add the word "management" at the end of the line after the word "corporate".

Fourth line from the bottom, the first word should be "unsuccessful".

Page 36 — Next to last line spell "Charybdis".

SO ORDERED.

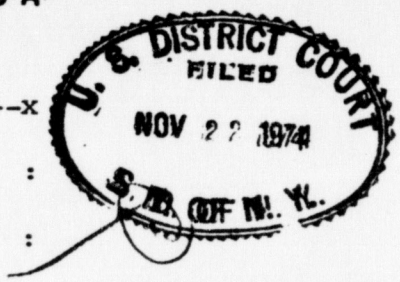
Milton Pollack

November 12, 1974

Milton Pollack
U.S. District Judge.

UNITED STATES DISTRICT COURT 2392 A

SOUTHERN DISTRICT OF NEW YORK



CHRIS-CRAFT INDUSTRIES, INC.,

Plaintiff,

v.

PIPER AIRCRAFT CORPORATION, HOWARD PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICHOLAS M. SALGO, DAVID W. WALLACE, and THE FIRST BOSTON CORPORATION,

Defendants.

69 CIV. 2227(MP)

FINAL JUDGMENT AND DECREE

#74,703

The above-entitled action having come before the Court for hearing on April 22, 23, 24 and 25, 1974, with respect to the relief to be granted herein after the defendants Howard Piper, Thomas F. Piper, William T. Piper, Jr., Bangor Punta Corporation, Nicholas M. Salgo, David W. Wallace and The First Boston Corporation were held liable to the plaintiff Chris-Craft Industries, Inc. by the judgment and mandate of the United States Court of Appeals for the Second Circuit (480 F.2d 341), and the Court having rendered a decision dated November 6, 1974.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the 231,002 shares of Piper Aircraft Corporation ("Piper") now owned by Bangor Punta, and acquired by it through cash purchases in May, 1969 from Fund of Funds Proprietary Fund, Inc., American Securities Corporation and Bay Securities Corporation and in an exchange offer in July, 1969 to the then shareholders of Piper, shall be considered

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authorized and outstanding for all purposes under the laws of Pennsylvania and under this decree, but shall not be voted hereafter by or on behalf of Bangor Punta or counted for quorum purposes for a period of five years and Bangor Punta be and hereby is enjoined accordingly. To the extent that any of such 231,002 shares shall be transferred to former Piper shareholders who accept Bangor Punta's offer of rescission pursuant to the decree of this Court dated May 3, 1974 in S.E.C. v. Bangor Punta, 70 Civ. 3940, the transferred Piper shares shall be free of this injunction and the voting thereof shall not be restrained by anything contained in this decree.

2. That the changes in Piper's By-Laws and in the size of Piper's Board of Directors since September 4, 1969 shall be rescinded and during the period of the injunction granted by this Decree Piper's By-Laws and the size of its Board shall be reinstated and together with its charter shall remain as they were constituted on September 4, 1969, unless otherwise agreed by the plaintiff and the defendant Bangor Punta or ordered by the Court for good cause shown.

3. That the individual defendants Nicholas M. Salgo, David W. Wallace and William T. Piper, Jr., together with the representatives of Bangor Punta on the Piper Board, at the next meeting of said Board scheduled for December 2, 1974, shall vote for resolutions to cause Piper to convene a meeting of its stockholders for the purpose of electing directors, the meeting to take place within approximately ninety (90) days of such Board action, and at the same meeting to take the

necessary action to immediately reinstate Piper's By-Laws as directed above except for the provision which expanded the Board from eight to ten members; the requirement to restore the size of the Board to eight members is to take effect the day of the said stockholders' meeting. In the intervening period between the call of the stockholders' meeting and the meeting itself, on consent of Bangor Punta, no action shall be taken at a Board meeting of the Piper Board without the consent of the four representatives of Chris-Craft on the Board and Piper shall not seek or be caused to seek proxies for any designee for the said election of directors.

4. That no shares of Piper owned by Chris-Craft or Bangor Punta and no representative of the stockholdings in Piper owned by either corporation, or, holding office as a director of Piper shall vote for or acquiesce in (1) the issuance of any stock, rights, options or other devices capable of increasing the outstanding voting shares of Piper beyond the number outstanding as of September 4, 1969, or (2) redemption, reduction, or purchase by Piper of Piper's voting shares outstanding as of September 4, 1969, or, (3) a merger, dissolution or liquidation of Piper, unless the same is ordered by the Court.

5. That the Court will retain jurisdiction during the pendency of the injunction granted to modify said injunction if such a course becomes necessary or appropriate due to any change in circumstances actual or prospective.

6. That Chris-Craft shall cover of defendants, Howard Piper, Thomas F. Piper, William T. Piper, Jr.,

Bangor Punta Corporation, Nicholas M. Salgo, David M. Wallace, and The First Boston Corporation, jointly and severally, the sum of $1,673,988, plus interest in the amount of $599,010.89, with costs to be taxed by the Clerk.

Dated: New York, New York
November 22, 1974

Milton Pollack
U.S. District Judge.

JUDGMENT ENTERED - 11-25-74

Raymond F. Burghardt
CLERK

COPY

U.S. DISTRICT COURT FILED NOV 22 1974 S.D. OF N.Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CHRIS-CRAFT INDUSTRIES, INC.,

Plaintiff,

v.

PIPER AIRCRAFT CORPORATION, HOWARD T. PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICHOLAS M. SALGO, DAVID W. WALLACE, and THE FIRST BOSTON CORPORATION,

Defendants.

69 Civ. 2227(MP)

MEMORANDUM ON SETTLEMENT OF JUDGMENT

#41474

The Court has received and considered suggestions from the parties in respect of the form and content of the decree to be entered herein. The conflicts of view have been resolved as set forth in the judgment filed this day so as to conform to the intent of the Court in respect to the decision made. The following explanatory comments may be of use.

During the injunction period the capital investment of Piper Aircraft Corporation owned by Bangor Punta

is not to be reduced or confiscated in part -- under the mandate of the Court of Appeals and under the Decree of this Court, the 231,002 Piper shares held by Bangor Punta are viewed as having been legally authorized, issued and outstanding but are made non-voting for a period of five years hereafter. Thus, the power of Bangor Punta to merge without consent of CC which was the principal concern of the Court of Appeals is thus effectively removed from Bangor Punta for the injunction period.

To afford Chris Craft an additional benefit, the decree fashioned by the Court makes this freeze of the vote on those shares retroactive in effect to September 4, 1969. The only use of the vote attaching to the 231,002 shares of Piper stock that has been made by Bangor Punta in the interim has been at the sole stockholders' meeting of Piper held on February 1, 1971 and to undo that use, the Court is directing a new stockholders' meeting at which the 231,002 shares will not be votable shares.

Similarly, since it may be assumed that Bangor Punta had a majority of the Piper board during the interim period as well as prior to September 4, 1969, and that

the incumbents are entitled to remain in office until their successors are elected at the next stockholders' election for directors, the Court is adding the benefit to those Chris-Craft receives by directing a near-by vote of stockholders for their choice of directors.

Chris-Craft is not being deprived of a single right which it had on September 4, 1969 according to its own voting strength -- nor are voting rights being conferred on Chris-Craft which it did not have. Bangor Punta is being denied part of its voting strength for five years hereafter and this deprivation is being made retroactive to September 4, 1969 by 1) setting aside by-law changes which it caused to be made since that date, and 2) ordering a new election for the one held on February 1, 1971 where Bangor Punta used its total voting strength.

Moreover, since Bangor Punta is entitled at the end of the freeze on part of its voting power to be reinvested therewith, it is entitled to be assured that its property rights in the shares affected which were lawfully authorized and are outstanding and for which it paid and which have not been ordered to be confiscated by the mandate, to

know that the corporate assets in which it holds a 51% ownership will not be merged, liquidated or distributed without its consent during the period that some of its share ownership becomes non-voting for management purposes. This does not give Bangor Punta a negative vote as suggested by the plaintiffs, it merely recognizes the fact that Bangor Punta is a 51% owner of the enterprise and equity regardless of the size of its voting rights.

The plaintiff has suggested that the declaration that Bangor Punta's non-voting shares are to be considered "outstanding for all purposes" suggests that they may be counted for quorum purposes. The Decree will therefore specifically provide that not only shall the 231,002 shares not be voted but they may not be counted for quorum purposes for the period of the injunction.

There is no prohibition in the Decree against an agreement between Chris-Craft and Bangor Punta for merger, liquidation or dissolution as the plaintiff seemingly suggests. The provision in the Decree is designed to prevent the confiscation, without such agreement, of the equity capital owned by Bangor Punta in Piper which Chris-

Craft might otherwise be free to undertake albeit the holder of only a minority of the equity capital. The Court of Appeals has ruled that ownership of the equity capital was not to be disturbed; the questioned shares were not to be reoffered to the public for sale; no new round of the control fight was to take place.

> Divestiture of the ill-gotten shares would not be appropriate under the circumstances of this case because it would be difficult to administer and would unnecessarily reopen the control battle. CCI understandably no longer desires to take control of a company that has been substantially changed. It seeks damages. 480 F.2d at 379.

The plaintiff states that the Board of Piper will be deadlocked in the future. If so, and this is not inevitable, the plaintiff will have gained an advantage that its equity voting strength did not entitle it to without the injunction.

The plaintiff has requested a stay of the Decree pending appeal. However, none of the provisions operate to the disadvantage of plaintiff; they may not be everything that plaintiff hoped for. The notion that Piper will be more stable if the Court does not now suspend Bangor Punta's vote on the 231,002 shares and undo the

vote thereof used in February 1971, seems at odds with reality. A stay pending appeal is not required if the object is really to add to the mandate of the Court of Appeals -- revision of the mandate must come from the Court of Appeals itself.

It therefore seems to the Court appropriate that the clock should start running now against the voting power of Bangor Punta's 231,002 shares -- not later. There has been a de facto regency since 1969 in which the record fails to show any gains by Bangor Punta for itself or any of the true advantages of management control such as enhancement in the value of its ownership interest in Piper. In practical contemplation there has already been a five year suspension of the use to Bangor Punta of the vote on the 231,002 shares and of its ability to compel a merger at any time. The Decree adds on a like period for the future.

The plaintiff's application for a stay of the Decree pending appeal is consequently denied.

November 22, 1974

Milton Pollack
U.S. District Judge

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CHRIS-CRAFT INDUSTRIES, INC.,

v.

PIPER AIRCRAFT CORPORATION, HOWARD PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICOLAS M. SALGO, DAVID W. WALLACE, and THE FIRST BOSTON CORPORATION,

Defendants.

69 Civ. 2227

Before:

HON. MILTON POLLACK,

District Judge

New York, April 22, 1974
10:00 a.m.

APPEARANCES:

PAUL, WEISS, GOLDBERG, RIFKIND, WHARTON & GARRISON, Esqs.,
Attorneys for Plaintiff,
By: Arthur L. Liman, Esq.,
Jack C. Auspitz, Esq.,
Anthony M. Radice, Esq. and
Richard A. Miller, Esq., of Counsel

APPEARANCES
(Continued)

WEBSTER, SHEFFIELD, FLEISCHMANN, HITCHCOCK & BROOKFIELD, Esqs.,
Attorneys for Defendants:
Bangor Punta Corp.,
David Wallace and
Nicholas M. Salgo,
By: James V. Ryan, Esq.,
C. Kenneth Shank, Jr., Esq. and
Robert A. Kandel, Esq., of Counsel

SULLIVAN & CROMWELL, Esqs.,
Attorneys for Defendant The First Boston Corporation,
By: J. F. Arning, Esq.,
C. W. Sullivan, Esq. and
R. Urowsky, Esq., of Counsel

CHADBOURNE, PARKE, WHITESIDE & WOLFF, Esqs.,
Attorneys for Defendants Piper Aircraft Corporation and Howard Piper, Thomas F. Piper and William T. Piper, Jr.,
By: Zachary Shimer, Esq., of Counsel

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THE CLERK: Chris-Craft v. Piper Aircraft Corp., et al.

MR. LIMAN: Plaintiff ready.

THE CLERK: Defendants?

MR. RYAN: Defendants ready.

THE COURT: All right, call your first witness.

MR. LIMAN: Sigmund Wahrsager, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LIMAN:

MR. RYAN: Your Honor, I believe it was Friday we submitted a joint pretrial order to your Honor. I just wanted to be sure you got it in chambers.

THE COURT: I don't intend to sign it. That may be your statement of contentions and Mr. Liman's statement of contentions and I will see what the proof is before I decide what the contensions should be or should have been.

MR.LIMAN: May I proceed, your Honor?

THE COURT: Please go ahead.

Q Mr. Wahrsager, what is your occupation?

A I am an investment banker, partner in the firm of Bear, Stearns & Company.

Q How long have you been a member of the firm of Bear, Stearns?

A I joined the firm in 1953, I believe, and I became a partner in the firm in 1958. And I have been with the firm throughout that entire period of time.

Q Are you a member of the Executive Committee

of the firm?

A Yes, I am.

Q And Bear, Stearns is a member of the New York Stock Exchange and the other national exchanges?

A Principal exchanges, yes, sir.

MR. LIMAN: May I have ~~makred~~ marked, your Honor, Mr. Wahrsager's resume, your Honor, does it matter to you whether we continue with the exhibit numbers from the prior trial? If we do, it would be No. 154. If we don't, we can make it 1.

THE COURT: You make it any way that you find it convenient for you to refer to them.

MR. LIMAN: I think maybe we should continue, then.

It would be Plaintiff's Exhibit 154.

(Plaintiff's Exhibit 154 was marked for identification.)

Q Mr. Wahrsager, is this the resume of your qualificatons that you have prepared?

A Yes, sir, it is.

Q What is your responsibility at the firm of Bears, Stearns?

A I am responsible for the activities of the Corporate Finance Department, that department at Bears,

Stearns which functions in the area that is broadly described as corporate finance. This area comprehends public offerings, private placements, merg er and acquisition work, tenders, matters of that kind as distinct from general brokerage activity.

Q Mr. Wahrsager, in the course of your duties as head of that department, are you engaged in the evaluation of securities?

A Yes.

Q For what purpose?

A For purposes of pricing determinations with respect to public offerings, for purposes of determining fair and equitable exchange ratios and merger, work for purposes in advising clients with respect to acquisition activity. I would say principally in those three areas.

Q You also serve on the boards of a number of corporations, am I correct?

A Yes, sir.

Q Are these listed in the resume 158, Plaintiff's Exhibit 158?

A Yes, they are.

Q I am sorry, 154.

MR. LIMAN: I would offer to save time, your Honor, 154 in evidence.

MR. RYAN: No objection.

(Plaintiff's Exhibit 154 was received in evidence.)

MR. LIMAN: I would mark as our next number the Bear, Stearns report, which has been furnished to the Court and to the defendants, dated April 1974.

(Plaintiff's Exhibit 155 was marked for identification.)

Q Mr. Wahrsager, was your firm asked to express an opinion as to the value of Chris-Craft holdings in Piper Aircraft Corporation in August and September of 1969 on certain assumptions?

A Yes, we were.

Q Did you reflect your conclusions and reasoning in a written report?

A Yes, we did.

Q Is Plaintiff's 155 that written report?

A It is that report. I am afraid that one of the charts is not appended. Chart C.

Q Chart C fell off that one?

We have now attached it.

MR. Wahrsager, was this report prepared under your supervision?

A Yes, it was.

Q And was the analysis reflected in it done under your supervision?

A Yes, it was.

Q I would ask you to assume that on or about August 7, 1969, Chris-Craft owned 295 shares of Piper Aircraft Corporation or approximately 41 per cent of Piper's outstanding stock.

I would ask you to assume further that Bangor Punta Corporation owned 501,090 shares of Piper or approximately 31 per cent of Piper's stock, those figures representing Bangor Punta's actual holdings as of that date less the shares which the Court of Appeals held were unlawfully ~~re~~ acquired.

A Acquired. Unlawfully acquired.

Q Acquired.

And I would ask further to assume that the balance of Piper's outstanding stock, to wit, some 28 per cent, was held by the public and that the control contest was still in progress.

On these assumptions, are you able to express an opinion as to the value of Chris-Craft's holdings on or about August 7, 1969?

MR. RYAN: Your Honor, we object to the form of the question being posed to Mr. Wahrsager on the grounds

that it presumes the wrong date. He is talking about August 7th and then Bangor Punta had 31 per cent. It is the position of the defendants that the key date is September 5th, which is the date which we received or purchased, acquired, our 50 per cent plus one share, and at that point Bangor Punta owned 37 per cent which it had acquired from the Piper family and then the hundred thousand shares during August. So we object to the question as posed.

THE COURT: I think that the point that you are raising involves an issue of law which is better decided after all of the evidence is taken, and this is taken without prejudice to the resolution of that issue of law, and it doesn't mean that the assumptions are necessarily those that I consider appropriate to be made.

I might add one further caveat so that Mr. Liman will have it in mind.

I would find it difficult to assume that there was 28 per cent outstanding when there weren't 28 per cent outstanding under any circumstances whether legally acquired or otherwise.

You may go ahead and answer it.

MR. ~~LIMAN~~ Ryan: Rather than repeat the objection, the three witnesses or experts being offered all have the

same premise and we make the same objection.

A Given the question that Mr. Liman has put to me, we formed an opinion, but under those conditions where 41 per cent is held in fact by Chris-Craft, 31 per cent is held by Bangor Punta Corporation, and the balance of the shares is held by the public. The balance being 28 per cent.

We formed an opinion that the shares of stock owned by the Chris-Craft Corporation would have the value of not less than $72 per share.

Q Mr. Wahrsager, when you say "the public", do you include in that term funds such as the Fund of Funds?

A Yes, I am assuming that the public comprehends all shares not owned by the two contestants.

Q I would ask you now whether you have also formulated an opinion as to the value of Chris-Craft's holdings on certain assumptions which the defendants have proferred, to wit, it is September 5, 1969, that you assume that on that date Chris-Craft owned 697,495 shares or approximately 42.4 per cent of Piper's stock; that Bangor Punta owned 607,478 shares or approximately 37 per cent of Piper's stock, that being the number representing the difference between the 51 per cent that they held by the end of that day less the shares that the Court of Appeals held were unlawfully

acquired; and that you further assume that the balance of Piper's stock was held by shareholders other than Chris-Craft or Bangor Punta.

On those assumptions, are you able to express an opinion as to the value of Chris-Craft's 42 per cent holdings?

A It is our opinion that given those assumptions, 42, 37, 21, if my arithmetic serves me, that the value would be not less than $72 a share.

Q Would you tell the Court how you arrive at the opinions which you have just expressed that Chris-Craft's holdings would have a value of not less than $72 a share, and you may make reference to the report which I have marked for identification at this point.

A In forming that conclusion, we have reviewed the data relating to Piper, to Standard & Poors, to Cessna, so as to determine whether or not in any meaningful review of the data we could find relationships sufficiently close that using these relationships one could determine a price for Piper Aircraft, ignoring the fact that there was in fact a hotly contested battle for control.

The price that we arrived at is -- the prices that we have arrived at, given various assumptions, are contained in the report and are summarized on page 4 of

the report.

Q What was your conclusion as to the price that a hundred share lot of Piper would have traded at in either August or September 5, 1969, absent the competitive bidding by Bangor Punta and Chris-Craft?

A Absent the inflationary level of the market introduced by that competitive bidding, we would have assumed that Piper would have sold at about $52 in either August --

Q Is that your best opinion?

A That is our best opinion. -- in either August or September.

Q How did you arrive at that figure?

A We considered a number of techniques. If I may, I would like to just have quickly gone through them. The technique A is a technique whereby we have related the price earnings ratio of Piper to the price earnings ratio of Standard & Poors, and in order to observe these relationships, I call your attention to the charts which are identified as Charts A and B, and these charts --

MR. LIMAN: It may be easier, your Honor, so that you don't have to thumb through, because he is going to be going back and forth, if I just gave you another copy of A and B from the report.

A These charts of A and B ought to be read in

connection with appendix D.

Turning first to appendix D, appendix D --

Q Wait for the Court to find it, Mr. Wahrsager.

A Appendix D, your Honor, shows a relationship over time commencing from 1960 and extending through June of 1969. That relationship purports to show the relative ratio, that is to say, the price earnings ratios of Piper to the price earnings ratio of Standard & Poors.

Q By Standard & Poors, you mean the Standard & Poors 400?

A The so-called Standard & Poors ~~2500~~ 425 share index, which is a commonly accepted standard. The raw data upon which this appendix D was constructed can be found in appendix A which gives the price earnings ratio of Piper.

That's in the last column, your Honor, appendix A and appendix B, which gives the price earnings ratio for the Standard & Poors index.

Q Did you chart the ratios of Piper's PE to Standard & Poors PE?

A We did indeed, Mr. Liman, chart these results and they are contained in charts A and B.

Q What observations and conclusions did you reach from this analysis?

A Well, first turning to appendix D, we noted that there were two very different characteristics of this relationship over a period in time. In what we shall call the earlier case, chart A, which is the period when Piper's earnings were very sharply accelerating, and this can be viewed to be the period '63 to '65, that relationship was well below a hundred per cent, that is to say, the relationship of Piper's PE to the Standard & Poors PE was in every month substantially below a hundred per cent, and the line which is fitted to this data we have fitted on the chart is really 36 months of relationship. This line essentially shows that irrespective of earnings level the relationship is fairly constant, the line is very close to being that of a horizontal line.

And we have asked the computer to compute an equation so as to give a statistical formulation for these 36 separate identifications on the chart. And that formula-fit equation is shown in the box on Chart A.

We now look at chart B and weshow characteristics of Piper's relationship to Standard & Poors, which are quite different. We note that in 1966 the relationship was consistently below a hundred except for two months. Likewise, through the early part of '67 and then

commencing in July of 1967 and extending through the balance of '68 the relationship is well above a hundred per cent. Characteristics are markedly different from that of the earlier presentation.

And we have endeavored to again take these same 36 months on the chart and fit a line, and we note that the characteristics in the second period are quite typical for a company in a cyclical enterprise; that is to say, the price earnings ratio tends to be high when the earnings are low, and vice versa.

To illustrate for a moment what I am talking about, if we should take a level of earnings on chart A, and let us assume that that level of earnings is $3 , by quickly reading up the vertical axis and finding the point of intersection, and then returning to the -- zero and then returning to the relationship shown on the left column, you will note that the relationship is about 8/10.

Take that same $3 earnings figure and go to chart B and you will note that the relationship is no longer 8/10 but rather 1.1 times. So there are two different kinds of statistical behavior and they are quite pronounced, quite different, and that is the reason that we have seen fit to segment the period in the fashion

that I have just described.

Q Having segmented the period in the fashion that you did, didyou reach some conclusion as to what would be the appropriate measure for determining the price that Piper would have sold at in August of 1969, absent the competitive bidding by Bangor Punta and/or Chris-Craft?

A Yes, yes., it was our judgment that the period immediately preceding would be of more controlling influence than that of the earlier period and we constructed a formulation based upon the equation shown here and the result of that formulation is expressed by the price that was in fact determined.

Q What earnings figure did you use for Piper?

A We used, Mr. Liman, an earnings figure of $2.86 a share.

Q Where did you get that from?

A That was derived from chart A, I believe -- I am sorry, appendix A, which would have been the 12 months running earnings, the last 12 months by a knowledgeable investor.

Q These were Piper's last reported earnings that would be reflected in that figure?

A Yes. It doesn't represent the results for any given fiscal period, but rather a running 12 months

figure.

Q Is that an accepted method in securities analysis by investment bankers?

A Yes, it is.

Q When you took the $2.86 earnings for -- was it for the 12 months, 12 running months ended June 30, 1969?

A I believe approximately that. If I may refer to the appendix, I can be more precise.

Q I wish you would.

A That would be -- if you look at appendix A, that would be alongside the month of July, $2.86, and again $2.86 is in August. This is before a 9 cent extraordinary loss.

Q Now --

A These are the earnings that would be in the investors consciousness, in viewing a prospective buy/no buy decision with respect to Piper.

Q What conclusion did you reach in applying those earnings to the imputed --

A The application of the formula produced and 18.7 PE for Piper. If we take this 18.7 PE and we multiply it by 2.86, that would achieve a result of fifty-three and a half dollars.

Q Do you recall what the premium over the Standard &

Poors PE you assigned to Piper in August of 1969?

A Well, the relative premium used in the equation was 113.6 per cent.

Q You have read Mr. Fitzgerald's testimony and report; am I correct?

A Yes.

Q And do you recall that in predicting the price in May of '69 he used a relative premium of 1.25 over the Standard & Poors multiple?

A He did use the one point 25 -- 125 per cent.

Q If you used that wouldyou have gotten a higher projected market price for Piper?

A Yes, we would have.

Q Why did you not use that methodology?

A Mr. Fitzgerald's point of view was not substantially different from our own. He simply derived his 125 per cent by confining himself to a shorter time period than we did. He produced that 125 per cent by looking at a point in time 13 weeks prior to the end of 1968. We looked at it over a 3-year period.

Q And that resulted in a slightly lower PE?

A In the case of our calculation.

Q Yes, sir.

A But the essential methodology was analogous.

Q Having arrived at, by this method, a market price for a hundred share lot of Piper in August of 1969, did you do the same thing for September 5th of 1969?

A Yes, we did.

Q What was the market price for then?

A I don't believe that there was any substantial difference.

Q It is set forth in your report?

A It is set forth in our report.

Q Would you give both figures, August and September?

A Both figures were calculated to be precisely the same, 53-1/2 in each case.

Q Did you employ any other securities ~~and~~ analysis techniques to determine whether the figure that you had arrived at was a reliable forecast of what Piper would have sold at during this period?

A We used other techniques, Mr. Liman. I would now like, if I may, to discuss technique C and skip B for the moment. We will come back to B and D later.

In looking at the raw data, of the absolute price of ~~paper~~ Piper to the absolute price of Cessna, this raw data can be shown on Exhibits A and Exhibit C respectively. We noted that there was a very interesting symmetry to the data, and we struck a relationship shown

in Exhibit F, the last column of Exhibit F, which shows nothing more than a comparison of the price of Piper to the price of Cessna.

You will note in the early years that this relationship shows Piper selling consistently higher than ~~Cessan~~ Cessna, that is surely true in 1960; in 1961 lower for the most part; again lower in 1962, '63, '64. Commencing in the middle part of '64 there appears to be a reasonable relationship as between the price of ~~paper~~ Piper and the price of ~~Cessan~~ Cessna. This is --

Q Did you say the last column or the first column? I am sorry.

A The last column. The last column shows the relationship of the -- I am sorry, I should have said the first column. I'd better go back and reconstruct that.

We note that for the period 1960 that Piper sells at or above that of Cessna. It says below in 1961 and '62, '63, and it says above consistently from the period '64 through to the end of 1969.

That relationship is shown in chart C and if we examine chart C --

MR.LIMAN: Here, your Honor, is an extra copy of C. Could you pass this to the Court?

A If we examine chart C, we show a relationship on the vertical scale of 90 to 150, and we plot these points in time from '64 through '69 and we note a distribution curve, a relationship gradually approaching that of a hundred, and that is in fact the estimate that we used on page 9 in the prediction of the price of Piper on a given point in time, as related to the price of Cessna.

Q Mr. Wahrsager, did you reach a conclusion as to what the ratio of Piper's price to Cessna's price would have been in August and September of 1969 on the basis of that methodology?

A Yes, we did.

Both results are contained on Page 4, Column C, and assuming that the price of Piper would have been precisely the same as Cessna, we would have predicted a price of 52 in August and a price of 54 in September.

Q What was the actual mean that you arrived at of the difference between the price of Cessna and Piper during this period?

A The actual average over the period '60 to '68 was 108%.

Q You used 100% for August and September of 1969?

A Yes, we did.

Q Why did you reduce the percentage from 108 to 100?

A We might just as well have used 108, but if you look at the chart there does appear to be a slope downwards in the general tendency of the points on the chart.

Q So, you dropped your 108 to 100%?

A Yes.

Q It is your best judgment, looking at the Cessna data, that Piper stock would have sold at a relationship of

100% to Cessna?

A Yes.

Q Was there a stock split in Cessna?

A Yes. That calculation was, in fact, taken into consideration.

Q Cessna split two for one?

A So we merely had to double the price in order to arrive at a point of equilibrium.

Q Did you attempt, in other approaches, to determine the market value of 100 shares of Piper in August and September of 1969 absent the control --

A We made three additional calculations.

If I may take up calculation D, calculation D is an attempt to make some meaningful correlation between the price earnings ratio of Cessna and the price earnings ratio of Piper, the relative ratio. If we look again at Exhibit F, the second column --

THE COURT: Are you talking about Appendix F?

THE WITNESS: I'm sorry.

Appendix F is what I am talking about.

If we look at Appendix F, we find that these relationships derived show a vast skewing, so vast in fact that one wonders whether a mere relationship expressed as between the relative PE and Piper and the relative PE of

Cessna would be a reasonable barometer for predicting price, and we came to the conclusion that absent some adjustment, the mere use of this raw derivative would not permit of a useful guide. Therefore, what we attempted to do was to use the data in such a fashion as a better spread of data could be presented, and what we did, we made certain assumptions. We made an assumption that for any given point in time Piper would be viewed by the marketplace as having two characteristics. It would have the actual earnings that it showed, and because it was a cyclical stock it would be an anticipation of earnings. When the earnings were low that anticipation would result in a higher anticipated level of earnings, and when the earnings were high, that anticipation would not be very much of an influencing factor, so it had a tendency to smooth the data.

So, what we did was to take Piper's earnings over a period of time and calculate what those earnings would have been by averaging the sum of the actual earnings and 20% of the net worth. This is a very abstract and hypothetical calculation but it does, in fact, produce a result that we think is useful.

/2 Q To produce a result that has some emperical validity?

A Yes. Over a period of time it stands up, and

hence we may view that as a so-called calculation D, and the results of calculation D are shown again on Page 4, and these results, essentially, tell us within August, employing this technique, Piper would have sold at 51 and in September 52-1/2.

Q On that basis, what have you computed as the ratio between your hypothetical PE for Piper and the actual PE of Cessna? Do you have that figure handy?

A The relationship of the hypothetical?

Q Right, to the actual Cessna PE.

A That is shown in the third column of Appendix F.

Q In fact, do you recall that Mr. Fitzgerald in his approach to market evaluation in May related the PE of Piper to the PE of Cessna?

A Yes, he did.

Q Do you remember what ratio he used?

A I believe that the relationship Fitzgerald used was 157%.

Q So Piper's multiple would be --

A Its multiple would be 157% of that of Cessna's multiple.

Q Is your computation here a more conservative one?

A We believe it is. We believe that our average for the last three years is that of 116%.

Q Did you use any other approaches to determine market value?

A Yes. We used one other approach to determine market value. The same kind of calculation that I have just alluded to was used in juxtaposition with the price earnings ratio of the Standard & Poor 425, that is to say, we attempted to relate these hypothetical earnings, these averaged earnings, to a price to determine a statistically derived price earnings ratio, and we related that price earnings ratio so derived to the Standard & Poor 425 price earnings ratio. It is the same kind of calculation. That's why I have taken them in conjunction with --

Q Did you attempt this approach for the same reason you testified to before, because of cyclical --

A It does produce a less skewing of the results, a smoother result.

Q Did you believe this was statistically valid?

A Because it did produce a result, yes.

Q What conclusion did you reach from that method?

A The conclusions reached from that method are shown on Page 4, and the employment of that method would have resulted in a price of 51-1/2 for Piper both in August and September.

Q When you say that something is statistically

valid because it produces a result, what do you mean by that?

A What I am trying to say by that, Mr. Liman, is that we have introduced this averaging technique. We cannot predict precisely why it works, but empirically we look at what the final ratios are, and if we observe the less skewing pattern, it means that it works.

Q Finally, did you use any other methods of conforming your forecast of the Piper price?

A We used one other method which is not a market derived method but rather one which has been identified in this report as a so-called return on investment method. That discussion is contained on Page 11 of the memorandum attached.

Q Would you describe that?

A What we did here was observe that over the period of 1960 to 1968 in fact Piper earned 16% on its beginning equity and, in fact, during that period of time Piper had a payout ratio of 45% paid as earnings, so we started at the end of June, 1969, and we took their earnings forward based on the assumption that it would continue to earn in the future what it indeed earned in the past less what was paid out by way of dividends. Working this method through, by June of 1976 Piper would have earned, or would be earning, an estimated $6.08 per share. We applied what we called

a normal price earnings ratio multiple of 17, so at that point in time if one were willing to sell Piper, one could have realized $103.33. We discounted that value back to August and September.

Q Using what discount rate?

A A 14% discount rate.

Q How did you arrive at a 14% discount rate?

A One might have used 12, one might have used 15.

Q Does this represent a best judgment by you?

A This represented our best judgment, and the result of the employment of this discount back resulted in the fact that 103.36 discounted back by 7% would have produced a present value of $41.31 to which was added the stream of dividend payments which aggregated $8.86. That is to say the discounted value of the payments aggregated $8.86 to produce a figure of $50.17. That is not a predictor using so-called emperical market judgment, but rather a totally different method.

Q Why did you use it?

A Just as a confirming -- why did I use it?

Q What was the purpose of your using all of these various tools that you described beyond that of the comparison of the Standard & Poor's Piper PE ratios?

A We looked for as many techniques, for as many

relationships, as we could that would provide us with some kind of insight, some kind of intelligent insight, as to what Piper must have responsibly been expected to be selling for in August, in September, absent the influence of the contestants having pushed the market up.

Q What was your bottom line in terms of your best judgment?

A Our best judgment giving effect to techniques A through E inclusive was that a 100 share value of Piper, a 500 share value of Piper, might be said to have been not less than $52 at or about this date.

Q By "this date", you mean September 5 and August 7?

A It would not vary as between these two points in time.

Q Mr. Wahrsagor, did you then make an effort to determine what the value of Chris-Craft's block would have been on either August 7th or September 5th on the different assumptions I have given you that either Bangor Punta owned 31% or that Bangor Punta owned 37%?

A Yes, we did.

Q What conclusions did you reach as to what the value of the Chris-Craft block would have been and how did you arrive at it?

A I asked my colleague, Mr. Seigel ~~Segal~~.

Q YOur colleague, Mr. ~~Segal~~ Segel, is not Herbert ~~Segal~~ Segel?

A Mr. ~~Leonard~~ Lester ~~Segal~~ Segel, who is somebody familiar with sophisticated statistical techniques, to determine for me what the statistical probability would be given the splits that you have indicated in your question, 41, 31, 28 or, alternatively, 42, 37, 22. In each case, assuming that the parties had a 50 - 50 chance of reaching each holder, and assuming, further, that nobody would be splitting the sale, selling to either one or the other, given those relationships, Chris-Craft would have been an overwhelming statistical probability, chance, of having gained control.

Q When you say, "overwhelming", what do you mean?

A Statistically in each case the statistical probability can be calculated to be in excess of 99%.

THE COURT: You are talking about cash on the barrelhead for this stock, aren't you?

THE WITNESS: Cash on the barrelhead or some package of securities that would appear to be worth to the recipient as much as cash on the barrelhead.

THE COURT: You could figure out what cash is worth to the recipient but when you come to evaluating a bundle of securities to the recipient, that's subjective?

THE WITNESS: It is more subjective than value in cash.

THE COURT: Did your statistical possibilities take into account the values of handing over securities instead of cash?

THE WITNESS: No.

THE COURT: You may proceed.

BY MR. LIMAN:

Q Did you, Mr. Wahrsagor, compute what the statistical probability of Bangor Punta prevailing in August of 1969 on the assumption that the exchange offers closed with Bangor Punta leading 45% to 41%?

THE COURT: Prevailing as to what?

MR. LIMAN: Getting majority control.

THE COURT: Getting the majority or control?

MR. LIMAN: Majority.

A We made such a calculation, and just as the odds favored Chris-Craft given the two earlier recitals, given the two earlier scenarios, the odds would favor Bangor Punta in excess of 99%.

Q Having made your determinations as to odds, and I should say as an investment banker before you received these statistics, did you have some judgment as to what the odds would be in this contest?

A I thought that the odds would favor Chris-Craft in the first case and Bangor Punta in the second case.

Q By "the second case", what do you mean?

A The case where you have reversed the finish and Bangor is in fact ahead.

Q 45 to 41?

A 45 to 41, yes. The fact that it was as high as it came out to be was a bit of a shocker, but I would have expected that the odds would have favored the parties given these various scenarios.

Q Did you then attempt to reach an opinion as to what the value of the Chris-Craft block would be?

A Yes, we did.

Q How did you do that?

A We considered a number of things.

We were influenced by the fact that they did have a commanding leading position in terms of ultimately achieving control. We looked at what the pattern of the parties had been in purchasing stock. Chris-Craft had paid $65 for some 300,000 of stock. Bangor had made a deal with the Piper family which, presumably, was worth no less than 80. Bangor bought stock in the market in excess of 80. These were all elements that we considered.

Then we looked at what in fact empirically people did, what a reasonable expectation of what people would do in a contested situation.

In our list of appendices you will note two appendixes on this point. One is shown as Appendix G, which describes the kinds of premiums that were paid in cash tender offers. We looked at contested tender offers where you had two parties who were vigorously vieing for control, and we looked emperically at what kinds of premiums were paid in order to achieve control.

These results are summarized on Page 13, your Honor, where I say that in Appendix H data is presented on contested bids during the same period of time. Of the twelve cases studied, five of them showed premiums of 100% or more and three were in excess of 75%.

Taking all of these elements into consideration, not any one, it is my professional judgment that control premium would be such as to give an ultimate value to the Chris-Craft holdings of not less than $72 a share.

Q When you say, "control premium", does that figure represent a premium on the assumption Chris-Craft had 50% of the stock?

A It had 50% of the stock.

Q Is it the same price as if Chris-Craft had 51% of the stock?

A Yes. It is that same price.

Q In your opinion, would the Chris-Craft block of

41% under the circumstances that you have been asked to consider have had a value of $72 a share?

A Yes.

Q Can you tell me whether in reaching that conclusion you took into account the fact that Bangor PUnta owned either 37% or 31%?

A Yes, we took that into consideration.

Q Did you take into account that Bangor PUnta had resources at its command to bid?

A It did in fact have resources.

Q Did you take into account that it had an alliance with the Piper family?

A Yes. All these elements were taken into consideration.

Q After considering them, your opinion remains that it was $72 a share that Chris-Craft could have gotten for its stock?

A That was our opinion as to what it was worth, given the conditions that I have recited.

Q Mr. Wahrsagor, have you been asked now to make an evaluation of the value of Chris=Craft's minority position once Bangor Punta gained over 50% of the stock of Piper on September 5, 1972?

A Yes.

Q You have assumed that Chris-Craft owned on that date approximately 42.4% of Piper stock; am I correct?

A 42% is correct.

Q You have assumed that Bangor PUnta owned approximately 51%?

A They had control, yes.

Q You have taken into account the fact that Bangor Punta as holder of more than a majority had the power to compel a merger?

A Yes.

Q Have you taken into account the fact that if it compelled a merger the dissenting stockholders would have appraisal rights?

A Yes.

Q Have you taken into account the fact that on September 5 Bangor Punta had not announced a plan of merger or announced the terms or timing of any such plan?

A Yes.

Q Are you able to express an opinion as to the value of Chris-Craft's holdings on September 5 under those circumstances?

A Well, on September 5, given those circumstances, I don't believe it would be possible to express an opinion as to value because I don't believe that the stock was

susceptible of evaluation at that point in time; in other words, other than selling it to Bangor Punta it is perfectly clear to me that nobody else would stand in Chris-Craft's ~~shares~~ shoes, exchanging their position for that of Chris-Craft, and the stock was inherently unmarketable unless one were successful in getting either a no-action letter or registration statement from the SEC.

THE COURT: Or registration from what?

THE WITNESS: Or a registration statement from the Commissione~~rs~~.

THE COURT: What do you mean by "registration statement from the Commissione~~rs~~"?

Q Effective, do you mean, through the Commissione~~rs~~?

A What I am suggesting is in the absence of the obtaining of a no-action letter or an effective registration statement, I don't believe that the shares could be publicly distributed.

THE COURT: In other words, you think it was essential to h. ve a registration?

THE WITNESS: Or a no~~-~~action letter.

THE COURT: Either?

THE WITNESS: Either one or the other.

THE COURT: Why a no-action letter?

THE WITNESS: Let's put it this way, your Honor:

I would think that our counsel, if we were to take up the matter with him of disposing of 700,000 shares of stock, would not have been willing to issue an opinion that those shares could be sold absent a registration statement.

THE COURT: Did you ever ask him?

THE WITNESS: I have not asked him, but I have an opinion not from my counsel but from counsel that was asked such an opinion by Paul Weiss which generally runs to that effect.

Q That's Mr. Kripke?

A Homer Kripke.

Q What was the date of that opinion?

A April of 1974.

Q As an investment banker, could you see whether you would have been willing to undertake the distribution of the shares absent the registration statement or a no-action letter?

A I would not have been.

THE COURT: Why?

THE WITNESS: I would not have been willing to run that risk, your Honor.

THE COURT: What was the risk?

THE WITNESS: The risk is that we may have been deemed to at some later point in time by the SEC to have

engaged in an unlawful distribution.

THE COURT: I thought you were telling Mr. Liman for the last ten minutes that you were assuming that control resided in Bangor Punta and that Chris-Craft stock was unmarketable generally?

THE WITNESS: Yes.

THE COURT: Why did you need a registration?

THE WITNESS: I don't believe that our counsel, given a quantity of the stock involved here, which was some 42%, even conceding that Bangor had control, would have been willing to give us an opinion, an unqualified unconditional opinion, that such shares could be sold.

THE COURT: Are you assuming that Chris-Craft was in common control of Bangor Punta?

THE WITNESS: I think that that theory might very well have been alleged by the staff of the Commission in seeking a no-action letter.

THE COURT: Did you give any credence to such a theory?

THE WITNESS: I would.

THE COURT: You would?

THE WITNESS: I would give credence to the theory expressed by the staff, whatever their theory was.

BY MR. LIMAN:

Q In fact, you have read the Goldman Sachs report, have you not?

A Yes.

Q Their report also speaks of a registered distribution, am I correct?

A Yes, it does. That's the method that they intend--

THE COURT: Do you always accept the opinion of Goldman Sachs?

THE WITNESS: But I accept the opinion of counsel.

THE COURT: Goldman Sachs are not lawyers, are they?

THE WITNESS: I accept the opinion of my counsel, and I have read --

THE COURT: I want to know to what extent you accept Goldman Sachs' opinion.

THE WITNESS: On this issue I don't believe it would be controlling.

BY MR. LIMAN:

Q If Chris-Craft came to you in this minority position on September 5 and said that they wanted to get out of Piper and they wanted to get out at the best price they could get, what would you have counseled them?

A My recommendation would have been that the best

price, the optimum position, would be to have a public offering.

Q In your opinion, could its block have been placed with funds?

A I don't believe so.

Q With other industrial corporations?

A Not in my opinion.

Q Other than a sale to Bangor Punta, is there any other method other than of public distribution that you can state Chris-Craft's block would have been liquidated by means of?

A They could have passed it out to their shareholders, but that's not what you are referring to.

Q To realize money.

A None that occurs to me.

Q Would you outline what would have been required in order to proceed with the public distribution via the registration statement?

A Well, this assumes that we were mandated in September.

Q Yes, sir. On September 5 we came to you.

A September 5 is very close, your Honor, to the end of the Piper fiscal year. Their year ends September 30. I think that if we assume that a registration statement or

a no-action letter is required -- I would like to make that assumption for this purpose -- we would have required an AY audit for the year ended September 30th. The actual preparation of the registration statement, I think, would not have been an arduous undertaking. I think that could have been done within a couple of weeks. That would have taken you to mid-October. The actual availability of the audit would not have been a difficult undertaking under normal conditions, but in point of fact the audit here was not really signed off until May of 1970 for reasons dealing with the retrofit program on the Twin Commanche. The whole question of reserves necessary to make ~~revision~~ provision for customers guarantee, et cetera --

Q Is it fair to say you would have wanted that twelve-month audited statement to make this distribution?

A Yes, I think so.

Q Either by a no-action letter or by means of the registration statement?

A Yes. I think we would have awaited the receipt of the twelve-month audit, and that audit came in ultimately not substantially different form in numerology in what Piper's early estimate was. I think they earlier estimated earnings of $2.98, and after much going back and forth on this question of the reserve adequacy the ultimate figure

was, I believe, $2.91 or $2.92.

Q You say their audited statement was not released by their accountants until May of 1970?

A May of 1970, when they finally signed off on this last issue.

Q In addition, if you proceeded via a registration statement, you would have to wait for the statement to become effective through the Commission?

A That's right.

Q That does not take one day normally, does it?

A Not normally. There is a time period. Anybody can speculate as to how long it would take. It is my judgment the earliest realistic date, assuming that everything were to move with dispatch, would have been January of 1970.

Q Would that have required the cooperation of Piper and the Bangor Punta directors on Piper's Board?

A Piper as a registrant would have been responsible for the disclosure contained in such. Chris-Craft would have been in the position of a selling shareholder.

Q Mr. Wahrsagor, was timing critical here in terms of a public distribution of Chris-Craft stock?

A Yes.

Q Why is that?

A Well, I think that the timing is critical largely

by reason of the market. The market in this period showed a very considerable worsening. If you note, Page 17, the S and P index in November has gone from 103 to 93. That's a pretty sharp downward movement. The relative PE has gone from ~~16-4~~ 16.4 to 15. I'm sorry -- the Standard & Poor PE. Cessna's market has gone from 23-5/8 to 17. Its PE has gone from 10.5 to 7.6. In point of fact there has been a deterioration of the market here, a deterioration that continued into 1970. There was an interim rally until you get a real collapse by the summer of 1970.

THE COURT: Did you foresee that deterioration?

THE WITNESS: No.

THE COURT: Didn't statistical studies tell you that was coming?

THE WITNESS: No, sir.

THE COURT: Did you take into consideration in giving the '72 valuation this deterioration?

THE WITNESS: No, sir.

BY MR. LIMAN:

Q Did you check to see what the forecasts were?

A The forecasts of what?

Q The forecasts of Piper's earnings in general.

A There were several forecasts available and these forecasts were in the range of $3 plus.

Q Did any of them predict a collapse of the economy in 1970?

A There may have been somebody who did. I didn't, and I was not aware of anybody else who did.

Q Would it be fair to say that you would not have expected the parties in this case to pay as much as $80 a share up through September of 1969 if they forecast a collapse of the economy and market?

A I don't think they envisioned that. I don't think they ~~visualed~~ visualized the collapse that ultimately occurred.

THE COURT: That was not the question.

THE WITNESS: Would they have paid $80?

Q If they visualized the collapse.

A I don't think they would have.

Q When you look --

THE COURT: Do you know what the purpose was of either party in buying this stock?

THE WITNESS: Of either party, sir?

THE COURT: Had you ever questioned either party as to what their purpose was?

THE WITNESS: Which purchasers are you referring to?

THE COURT: Talking about the stock you say they would not have bought at $80.

THE WITNESS: Well, if they visualized the

collapse, I think it is questionable whether they would have bought the stock. I understand what their purpose was.

t3 am

THE COURT: What was their purpose?

THE WITNESS: I think each of their purposes was to achieve control.

THE COURT: For what reason?

THE WITNESS: For all of the attributes that follow control.

THE COURT: What was the value of that control if you knew their purposes?

THE WITNESS: I am afraid, your Honor, I am not with you.

THE COURT: Maybe I am getting ahead of the story. I will withdraw it for the moment. But you might think about it.

The Court asked if the parties could achieve control. What was, in your opinion, the value of control here?

THE WITNESS: The value of control was the premium implicit in being in a control position.

THE COURT: Read that to me, will you please.

(Read.)

THE COURT: Go ahead.

Q You have no doubt as an investment banker, do you, that control demands great value.

A I believe it does.

Q In the marketplace?

A Yes.

Q Picking up on a question that his Honor asked, did the multiple of Standard & Poors in August of 1969 suggest an anticipation by the market of a collapse in 1970?

A No.

Q Going back to the underwriting distribution of Chris-Craft's minority position, were there certain characteristics of this underwriting that you would describe as not normal in underwritings?

A Yes.

Q Would you tell the Court what those characteristics were?

A Piper Aircraft has a capitalization, I believe, of 1,650,000 shares of stock. At the time that you would have requested an underwriting on behalf of your client, there was then outstanding in the hands of the public, that is to say, everybody other than Bangor and Chris-Craft, some 80,000 shares of stock. You are talking about selling 700,000 shares, and in my experience that's a pretty substantial addition to the ~~flow~~ float of a stock that is very inactive. I think that would make it unusual to begin with.

Q Is it easier to sell a large block where there is no market than where there is a small float outstanding?

A I think so. I think the market can only be an embarrassment rather than a plus.

Q Why is that?

A Well, if your discount from the market is extraordinarly high, it appears to suggest that there is some unusual features attributable to this and one ought to take a second look at it. It should cause one to look more closely, to be somewhat cynical.

Assuming the other position, assuming that your prospective offering price is substantially higher than the market, that causes other difficulties which are perhaps more obvious.

If we have got to start selling at 10, it is difficult to sell an offering of 700,000 shares at 20.

Q In your opinion, what would the announcement of an offering of 700,000 shares approximately have on the market that had 80,000 shares as a total flow?

A We have opined in the memorandum that we would have expected that it would have had a deleterious effect and we have tried to quantify it in the range of 10 to 15 per cent.

Q Were there other characteristics of this proposed

underwriting that are not normally found, Mr. Wahrsager?

A I don't believe that there would be any institutional interest in this offering, and I think it would require really a broad retail distribution. I don't think one could anticipate making group sales to the trust department of the Morgan Guaranty Trust ~~of~~ or the Chemical or ~~anything~~ anything of that kind. I think this is strictly a retail distribution.

Therefore, I feel that there would have to be an additional discount element, if you will, as an inducement to the prospective buyer.

Q Were there any characteristics of this underwriting that were unusual and created by the relationship between Bangor as the controlling party, and the seller, as the minority party?

A Either it would ~~o~~pose a question that would be not unreasonable as to why Bangor isn't buying it at this price. The prospective investor would ask himself that. And you would also have all of the ~~kids~~ kinds of language in the ~~prosectus~~ prospectus that would run to the question of the -- their ability to merger and their -- I presume their unwillingness to make a positive statement as to the terms and conditions under which they would merge.

Q Would you, as an underwriter approaching this,

expect that Bangor, as a reasonable businessman, would commit itself in the prospectus that it would offer a price on a merger no less than your offering price?

A I think they would make no such representation or commitment ~~but~~ rather than make the representation that there is no assurance that in any prospective merger the shareholders participate in this offering will receive as much as they're paying here.

Q Normally, in an underwriting, when is the price fixed?

A Usually the night before or the very day of the offering.

Q Taking what you said was the earliest realistic date for a public distribution at the end of January 1970, would you tell us what the price you would have forecast that Chris-Craft could have received and how you arrived at it?

A We have used it --

MR. RYAN: Your Honor, again we renew our objection. We are now in January.

THE COURT: The reason we moved into January was, I suppose, the witness says he would take a little time and expense to get going on this, and this is based on assumptions on assumptions on assumptions. We will

take them all and consider the legal consequences of all these assumptions, if any, at a ~~priper~~ proper time.

Q Are you saying, Mr. Wahrsager, that you would not have underwritten this without 12-month financials?

A Yes.

Q And those 12-month financials weren't ready at least until May of 1970?

A Yes.

Q And that's not an assumption, that's a fact?

A That is a fact.

Q Let us take the end of January 1970. How would you have ~~placed~~ priced this?

A By the employment of the same four methods that were developed earlier, that is to say, method A relating Piper's earnings to the Standard & Poors; method B relating the so-called hypothetical earnings to the Standard & Poors; method C relating the price to Cessna; method D relating the price -- the hypothetical price earnings ratio to the actual price earnings ratio of Cessna. We believe that in January the price would have been approximately $40 a share unadjusted for any discounts that we introduced. The discounts that we have introduced, which we have identified earlier as being the announcement, and the pressure that that would create on the price

of the stock, to concession from market in order to make it attractive in the hands of the purchaser; and C, the larger than normal underwriting spread we have calculated to be a 25 per cent discount which would have reduced the $40 computed price to a $30 realizable price.

We then consider the extent of the negagive impact introduced by this issue. this very serious issue, relating to the Twin Comanc. the adequacy of the reserve, all of which would be spelled out in full in the prospectus.

MR. SHIMER: At this time I would like to interpose an objection on behalf of the Piper defendants to this consideration. At the initial trial the Court ruled that as between the individual Piper defendants and Piper Aircraft Corporation and Chris-Craft, Chris-Craft was not damaged by alleged non-disclosure concerning the PA-30. Now, having not appealed that phase and having been foreclosed from further consideration of that, they are ~~now~~ attempting to get the same result by removing the amount from the bottom and I believe that is totally improper.

MR. LIMAN: I am not trying to do any such thing, your Honor. I am asking him what he would have had to disclose in the prospectus. Your Honor said we didn't rely on the information concerning the Comanche and Pocono in making the purchase. We didn't challenge your

Honor's findings on that. Mr. Wallace testified at the original trial that the Twin Comanche probably would have had to be disclosed in a prospectus and I am not relying just on Wallace, I am asking this witness would it have had to be disclosed.

A I believe that it would have to be disclosed, yes.

Q If you were the underwriter, would you have insisted on its disclosure?

A I would have insisted on its disclosure and I would have hoped it wouldhave been brought to my notice in order for it to be disclosed.

Q Did you make a prediction on that basis as to what might be the effect on your underwriting?

A We made a prediction. It is a very loose prediction and it is very difficult to quantify. We have stated in our report that it might have affected theprice by as little as 5 per cent or as much as 25 per cent and we have adopted merely another 10 per cent discount factor in order to try to cover such contingencies.

Q What does that bring you to?

A That would bring us in January to a price, a net realizable price of 27.

Q Now I want you to give me an underwriting price

based on an assumption. I will ask you to assume that the 12-month figures of ~~paper~~ Piper were released by Arthur Young by November and that the registration statement or no-action letter and all of the other steps that you were required to take had become consummated so that you could make your distribution by the end of November 1970. Have you made a computation? End of November 1969.

A We have made such a calculation.

Q What is your net figure to Chris-Craft?

A The net figure to Chris-Craft would either be 36-3/4 or 36-3/4 less this 10 per cent which we are attributing to the revelation with respect to the Twin Commanche Retrofit. I have to be a little bit ambiguous here because I am presuming that in their twin desire to expedite the transaction, Bangor and Chris-Craft would have, at a very early date, resolved this controversy and what appears to be a burning issue might not have been such a burning issue.

So that if the problem was not as serious so as to require any important disclosure, then the realizable price would have been 36-3/4 and again depending upon the influence of this factor, it mighthave been 10 per cent lower.

Q Let us go back to the actual date on which the

audited figures were released by Arthur Young in 1970. Can you tell me whether in your opinion the Chris-Craft block could have been distributed on that date?

A I am sorry, in May of '70?

Q If you had to wait until May of '70 for those figures to be released, if they weren't released earlier, do you have an opinion as to whether it could have been distributed and, if so, at what price?

A I think the ability to have effected a distribution at that point in time would have been seriously impaired.

Q Why?

A Well, I think there were several things indicated in the release of the report, not least of which is the fact that ~~the~~ Piper earned half in the first six months, because these facts were released concurrent with the report, than they did in the first half of '69. The figures were exactly half. They earned 83 cents in the first half vs. a $1.66.

This surely -- and then quite apart from the influence of the numbers and the fact that they subsequently recorded losses which we would not have known, the fact is we are getting into a very, very treacherous market, and even had the figures been quite the reverse, I am afraid

that my conclusion would be the same.

Q Namely?

A That May of 1970 was not a propitious time to effect a distribution. I don't think it could have been sold.

Q You don't think it could have been sold?

A I don't think it could have been sold.

Q What about today, Mr. Wahrsager, do you think you could offer Chris-Craft stock through a public distribution today?

A I don't believe it could be done today.

Q Why is that?

A Despite the fact that Chris-Craft had a good year last year --

Q You mean Piper ?

A -- Piper, I am sorry, had a good year, having lost money in '70, in '71 and then unfortunately having the non-recurring loss in '72, they did post a good result in '73; and even assuming that their earnings are not substantially different from what they would have been in '74 -- in '73 -- in '74, I don't think this present climate permits ~~of~~ an offering of the stock.

Q Is this a market today in which there are many public offerings --

A There are few common stock offerings today of secondary issues, you might say. Let us put it this way: Both of secondaries and of secondary issuers today, you find very little of that. I think that new issue activity today is largely a function of perhaps doing some financing for utilities, common stock offerings and a very, very large amount of debt finances.

Q Does your report show what price Piper was selling at in May of 1970 on the Philadelphia, Baltimore and Washington exchange?

A Yes, it does.

Q Had it dropped then to between $12 and and $18 a share? It is appendix A.

A I know it is appendix A. Yes. In May we have a range of 18 high, 12 low, 12 close.

Q In your opinion, Mr. Wahrsager, -- you have participated in many underwritings, Mr. Wahrsager, since you have been at Bear, Stearns?

A Yes.

Q -- am I correct that to have distributed Piper's stock either via a registration statement or a no-action letter, you would have had to put together a group?

A We believe that this would have required a formation of a syndicate, yes.

Q Can you tell the Court whether in your opinion, in terms of the normal distributions in which your firm has ~~prepared~~ participated, whether this would have been an easy or difficult underwriting to undertake?

A I think it would have been a difficult one.

Q Can you think of many more difficult?

A I am sure there are some more difficult ones, Mr. Liman, but I am also sure that this would not be vanila ice cream.

MR. LIMAN: I have no further questions.

I would offer his report, your Honor.

MR. RYAN: Your Honor, could we have maybe a three or four-minute recess.

THE COURT: Yes. We ~~weill~~ will take a recess.

(Recess.)

MR. RYAN: Your Honor, the plaintiff offered Mr. Wahrsager's report in evidence and I would like to reserve my objections thereto until I finish my cross examination.

THE COURT: All right.

MR. RYAN: I think that is so for the other counsel.

MR.SHIMER: That is correct, your Honor.

CROSS EXAMINATION

BY MR. RYAN:

Q Mr. Wahrsager, in your preparation for your testimony here today, did you read the decision of the Court of Appeals in this matter?

A Yes, I did.

Q Did you read the portion of the Court of Appeals opinion where the Court stated, "The measure of damages should be the reduction in the appraisal value of CCI's Piper holdings attributable to BPC's taking a majority position and reducing CCI to minority position and thus being able to compel a merger at any time."?

A Yes, I did read that, Mr. Ryan.

Q In the investment community, Mr. Wahrsager, is there a difference between an appraisal value of a security for investment purposes and its estimated market value?

A There may be. There may be a variance.

Q But there are procedures for arriving at an appraised investment value and an estimated market value?

A Sometimes those methodologies differ, sometimes one is a function of the other.

Q Well, in the five methods you used, method E is a method; is that correct?

A Yes. That would be -- I forgot how I referred to that method -- return on investment.

Q That is correct.

A Yes.

Q So that it would be possible for you to arrive at an appraised value of the Chris-Craft's Piper holdings on September 5, 1969?

MR. LIMAN: Appraised or appraisal.

MR. LIMAN: Appraised for investment purposes.

A This question of what does "appraised" mean is a question to me, Mr. Ryan. Really, what does it mean? IN other words, appraisal has many meanings. There are appraisers who do appraisals, and they ~~don't~~ actually go in and count the brick and mortar and machinery and price equipment. That is a kind of appraisal.

The kind of appraisal that we performed in E is another kind of appraisal. What I was endeavoring to do was to make a market appraisal based upon my expertise as an investment banker.

Q In other words, your conclusions, your opinion, is as to what you think the estimated market value of the Chris-Craft Piper holdings would be at the particular dates?

A That was what in fact I attempted to do in

calculations A through D inclusive.

Q In your conclusion that the Chris-Craft or that Piper shares would have sold in this August-September period at $52 a share was your opinion as to what the estimated market would have been absent the fight for control?

A That was my market appraisal, if you will.

Q You have testified, Mr. Wahrsager, that in your opinion there was a premium applicable to the dominant position of Chris-Craft in August or September of 1969; is that correct?

A Yes, sir, that is my testimony.

Q And that this premium was 40 per cent over what your estimate of the market value of those securities would have been had there not been the contest for control; is that correct?

A Thatis correct, Mr. Ryan.

Q Now, you did refer in your testimony to your exhibit appendix H, in which you were referring to premiums paid and contested tender offers or exchange offers?

A Yes, sir.

Q Do you recall that testimony?

A Yes, I do.

Q Was your opinion that a 40 per cent premium would

have been paid for Christ-Craft's Piper block in August of 1969 based upon the material you had in appendix H or was it based upon your random selection?

A It was strongly influenced by the material that I presented in appendix H, yes, sir.

Q Can you point to any situation, any case, in appendix H in which you had a 41 per cent block of securities held against the 38 per cent block of securities in the middle of a contest for control in which a sale was made to a third party?

MR. LIMAN: Objectionto the numbers stated. I think you meant 42-38.

Q 42-37, excuse me.

A To those precise numbers, Mr. Ryan?

Q Yes.

A I cannot tell you that any one of the examples shown here is precisely on point with the distribution that you offered me.

Q Well --

A I can tell you that in several of these cases that I am familiar with a substantial price was paid for a leading amount of stock which gave the contesting party in effect control.

Q Well, could you give us what the percentages

were in the situation involved in these cases which you referred to?

A I'm doing this from recollection now, so you will bear with me.

I have in mind in particular the famous contest for control by United Fruit -- for United Fruit Company. Here we had two contenders, Zapata Norness and AMK. AMK ultimately prevailed in that contest, They were in fact the winner. It was later a merger of AMK and United Fruit to form what is now United Brands.

My recollection, if it serves me properly, is that Zapata Norness got a very handsome premium for turning over the control of its stock which was the very critical amount of stock required by AMK in order to achieve victory.

Q And that was sold, though, to a person who was involved in the fight, not a third party.

A Sold to thatparty. I am not suggesting that a third party was involved here. I am suggesting that there are two parties vying for control.

Q I know, but in our case here, as I understood your opinion, was that a third party would have come in --

Q -- and paid $72 a share?

A In my opinion, it is not unreasonable that

a third party would have come in and paid $72 a share would they have regarded the probability of success to be a very high probability.

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am

Q That's what I am trying to get at. Your opinion of the $72 sales price for this block was based upon your probability that the fellow had a 99 plus percent chance of winning.

A Yes. I am saying had he not had such a high confidence factor the extent of premium would not have been so pronounced.

Q So none of the cases on your Exhibit H, your Appendix H, come into that conclusion.

A I am not saying that any of these contenders sold out to a third party. What I was trying to point out here is that when Larry ~~Tish~~ Tisch quit the battle for Commercial Credit, -- I think that's one of the cases in Exhibit H -- and he disposed of his shares to the other party, to the successful, to the victor, he was taken out at a very handsome premium.

Q Isn't that usually what occurred in those days?

A I believe it was. I believe that that's what I would have anticipated to have occurred in this case.

THE COURT: Are you saying to me that that's what C.C. entered the contest for?

THE WITNESS: I don't believe that it was their motive. I don't think they expected to be left high and dry at the end either.

Q Other than one of the participants in this contest for control, would you just describe what type of third person would have come in and made this purchase?

A Well, we are dealing in a period , Mr. Ryan, where there are a lot of enthusiasts. There are a lot of prominent names: James Ling, Charlie ~~Bludhorn~~ Bluhdorn -- you know them as well as I -- who had, apparently, insatiable appetites for gathering control of business where they believed they could acquire a desirable business, such as Piper Aircraft, and where they believed that what they were buying was a very, very ~~and~~ convincing and persuasive position whereby their control was quite clearly evident . I believe that such a price would not have surprised me had such a sale occurred.

Q You mean that Mr. ~~Bludhorn~~ Bluhdorn and Mr. ~~Tish~~ Tisch would have paid approximately $20 over what you considered to have been the estimated market price of that stock?

A Yes. That would not surprise me a bit.

Q So, they would be risking, in a sense, $49,000,000 buying the shares of Chris-Craft?

A That's right.

Q And that stock, of course, would only have had a market value of, the battle for control ~~of~~ aside, of, approximately $35,000,000.

A $35,000,000, yes. The difference between --

Q So they would have paid a $14,000,000 premium over this estimated market price to get into this dog fight?

A Not to do that. To get into the dog fight with a very clear visibility that they were going to prevail in the dog fight.

Q This 99 percentile you are talking about?

A Yes.

THE COURT: How much do you say they would have paid for that privilege?

THE WITNESS: I am suggesting, your Honor, that had they believed that they would have prevailed in the contest, they would have paid, in my opinion, $72 a share for the Chris-Craft block.

THE COURT: You mean they would have put $72 in cash on the line and then slugged it out as to whether they could get the rest of the stock?

THE WITNESS: Yes, sir.

THE COURT: They would risk all of that money against the possibility of being what is referred to here as "locked in an undesirable position"?

THE WITNESS: Again, the threshhold issue is how persuasive is the argument as to the statistical odds of their prevailing. These are companies with large

resources. They would have put $42,000,000 on the barrelhead, as you point out, and what is required for them to have paid for the gap stock to bring them up 51%. We are talking about 160,000 shares approximately. That would not have surprised me. Given this era and time, and given the propensity for control that existed in this period of time, it would not have surprised me.

THE COURT: You think the stockholders of the acquiring corporation would have stood for that one minute?

THE WITNESS: I think they did stand for it.

THE COURT: No stockholder suits resulted?

THE WITNESS: Not to my knowledge, your Honor. I think there was a great flurry of acquisition activity. There were great premiums paid. I am not familiar with any actions brought by plaintiffs going to the prudence of the management's decision to make these acquisitions.

THE COURT: Well, the acquisitions were made with a different point of view. The acquisitions you are talking about that were being made were acquisitions of low multiple stock to be fed into a high multiple machine and then diffused so the earnings of low multiple stock got into the high multiple area, which is really a confidence game, correct?

THE WITNESS: I don't know. He was embarked on

a program that was not very different from any others once they got a multiple out, and if they could buy low multiple stocks and get the benefit of the so-called higher multiple on a low multiple earning, there was an arbitrage, if you will. He played that game.

THE COURT: That's the synergistic value?

THE WITNESS: I don't know if that's synergistic. I think it is kind of arithmetic rather than synergistic.

THE COURT: What has happened as a matter of practical history in your experience in Wall Street to this process? Have these values been vindicated by the market?

THE WITNESS: I think it is hard to reach conclusions. Some of the people that were engaged in this game, I think, have been vindicated. I think up until very recently IT&T was certainly vindicated, and this was part of their game. I think they have fallen on evil days for reasons we need not go into here.

THE COURT: When did the big slide begin?

THE WITNESS: The so-called disenchantment with the conglomerate companies?

THE COURT: Yes.

THE WITNESS: At or about the very period we are in.

THE COURT: Wasn't it in the beginning of 1969

when the new administration came in?

THE WITNESS: I don't know that there was any correlation between the new administration and --

THE COURT: Was there any correlation between an announced anti-trust policy to go after bigness apart from --

THE WITNESS: There were investigations. I recall the investigations. They investigated Leasco and National General, and others.

THE COURT: Was that in the conglomerate field?

THE WITNESS: They were conglomerates that were being investigated.

MR. LIMAN: I would suggest to your Honor that President Nixon, in defending the IT&T settlement, stated it was the policy of his administration not to be against big business per se.

THE COURT: I have a few suggestions that I could counter to that, but I am going to listen.

We are at the point where the disenchantment started in the beginning of 1969.

BY MR. RYAN:

Q Just to go back and recapitulate, your opinion of this $72, 40% premium is based upon the atmosphere of the time, the "swingers" as you say, Mr. ~~Bludhorn~~ Bluhdorn and that group?

A I don't think I described them as such, but I would not quarrel with that adjective.

THE COURT: How do you spell that? S-l or S-w?

A [continuing] The possibility for success -- I'm not suggesting Mr. Bluhdorn ~~Bludhorn~~ or Mr. Ling ~~Link~~ or Mr. "X" would simply jump in and pay $72 and simply take their chances, but they would assess their chances. They would assess their chances as to their ability to get the gap stock in order to bring them into control.

Q They would pay the $72 only if there was a 99% ~~of~~ chance of winning?

A I don't say only if there was a 99% chance. They may do it if there was a 50% chance.

Q Would your firm, Bear Stearns, have been prepared to recommend to one of its clients to buy this Piper block of Chris-Craft at $72 a share?

A We might very well have.

THE COURT: Would your firm have financed it?

THE WITNESS: When you say "financed it," I don't think --

THE COURT: Put your money in front.

THE WITNESS: We don't normally put our money up in front of anything. I don't think --

THE COURT: That's what I am asking. Would you have

financed it, financed any such speculation?

THE WITNESS: That's not really the business we are in.

THE COURT: Do you know anybody who would have financed the speculation?

MR. LIMAN: Your Honor, I object to the term, "speculation."

A Do I know anybody that might have bankrolled?

THE COURT: Mr. Liman objects to the notion that it was a speculation. Do you think it was a speculation, whether or not the public float could be acquired by somebody coming in?

THE WITNESS: There is speculation in everything, your Honor.

THE COURT: So the term "speculation" is not an improper term to use, is it?

THE WITNESS: I think it has an overtone perhaps I can understand that Mr. Liman --

THE COURT: What is a watered-down word meaning speculation?

MR. RYAN: High risk.

THE WITNESS: Yes, high risk.

THE COURT: Was there a high risk attached to whether or not you could get enough of the public float to go

over the top?

THE WITNESS: I don't believe so. I don't believe that there was a high risk. There was a risk and --

THE COURT: Have you, by the way, ever read the bylaws and charter of this corporation?

THE WITNESS: No, sir, I have not.

THE COURT: Do you know what kind of voting they had?

THE WITNESS: They do have cumulative voting.

THE COURT: How many shares would it take to elect five directors of the eight?

THE WITNESS: I have not done the arithmetic.

THE COURT: Would it shock you to know you could not elect five directors with 51% of the stock?

THE WITNESS: It does not shock me.

MR. LIMAN: Your Honor, again, I will object to that. Your Honor's questions are based on the assumption that the majority could not change the size of the board. In fact, Bangor Punta did change the size of the board when it suited its purpose.

THE COURT: Would you be surprised to learn that with a board of ten at no time in 1969 to the present could Bangor Punta have elected six?

THE WITNESS: A board of ten?

THE COURT: Mathematically.

THE WITNESS: No.

MR. LIMAN: Your Honor, I would concede that in any even number it cannot happen. On any odd number --

THE COURT: Did you concede that in the Court of Appeals?

MR. LIMAN: Your Honor, if you are trying to try me in terms of the Court of Appeals' decision --

THE COURT: I am merely asking you that question because the Court of Appeals handed it to me to say whether that control was achieved in the sense that there could be a merger, and now I am asking the witness you produced here as to whether or not they could have voted a merger.

MR. LIMAN: Your Honor does not doubt that, do you, with 50%?

THE COURT: Not only do I doubt it, but you are completely wrong.

MR. LIMAN: Your HOnor, I respectfully dissent from that. I think your Honor has misread --

THE COURT: Please take your pencil. I will give you the figures right now.

MR. LIMAN: I have got them.

THE COURT: First of all, take it without the freeze. Take 1,644,890 shares. Give Bangor Punta

832,706 shares for an eight-man board and 857,921 shares for a ten-man board. You tell me whether under cumulative voting at any time from 1969 to the present Bangor Punta was in a position to vote for a majority of directors.

MR. LIMAN: Your HOnor, they fix the number of men on the board and, your Honor, by using even numbers you can always say they don't have it. But they had it if you look at the minutes, your Honor, when they wanted it. An odd man slate they changed to an even man slate. They have six of the ten and there is no doubt that under Pennsylvania law they could have, if they chose, merged this company. A reading of those minutes, and particularly the minutes when they went to an odd man slate in 1970 over our objection, will show that. I don't think that you can say that because they chose to have the ten man slate or an eight-man slate or a six-man slate that it derogated from their power and the Court of Appeals didn't understand it that way. They say in their own prospectus that the holder of the majority has the power to compel a merger, and they understood it that way.

That's what we are here to try.

THE COURT: We are questioning the experts who are making valuations here to determine whether they made a valuation on a premise of control.

I am sorry I interrupted you. Go ahead.

BY MR. RYAN:

Q Getting to your probabilities now, your random selection, you assumed that there was a 50 - 50 chance vis-a-vis the period either August 7th or September 5 when you had either the 28% or the 21% and Chris-Craft had the 41%; is that correct?

A Yes.

Q You come with not only a 99% but almost an absolutely sure thing on the basis --

A 99%.

Q You flip a coin and they would come up with 50% quicker than we would, Bangor Punta would, with 31%.

A Yes.

Q That's almost a ~~truism~~ truism.

A Yes.

Q When you reached your assumption here, conclusion, would you consider --

A I'm sorry?

Q When you reached your assumption here, 50 - 50 --

A You used the word, "~~collusion~~ conclusion."

Q Assumption.

A Oh, conclusion. I'm sorry.

Q When you reached your assumption that there would

be a random selection, there would be a 50 - 50 chance, did you consider any of the economic factors of that?

A Yes.

Q Did you consider what cash Bangor Punta had available at that time?

A Yes, I did.

Q How much did you assume it had available at that time?

A I think the record shows that Bangor Punta had no less than $12,000,000.

Q And could have had more?

A I'm sure it could have had more.

Q Did you make any study of the Bangor Punta financial statements?

A Yes. I looked at them and I am satisfied that they could have raised more money.

Q Did you realize that they had, Bangor Punta, the support of the Piper management in its --

A Yes.

Q Did you, in your reaching your assumption of the 50 - 50 chance, take into consideration the fact that Bangor Punta had a contractual obligation to attempt to obtain 51% of the shares?

A They had to use their best ~~records~~ efforts to do that, yes.

Q And that they were in the market during August and had a certain momentum?

A Yes.

Q Did you consider how long it would take you to find a purchaser at $72 a share and convince him he should buy it?

A I don't know that -- at $72? You are talking about a prospective purchaser of the minority?

Q That's right. 41%. Would you consider how long it would take you to find one of these purchasers?

A I don't think that it was simply a matter of making a phone call. It would be a matter for some diligent effort if it were to go that route. That is not to preclude Chris-Craft itself from going that route.

Q Going what route?

A I think we are talking about two different things, Mr. Ryan. You are talking about finding a purchaser?

Q That's correct.

A For the stock at $72.

Q That's correct.

A We are talking also about Chris-Craft's engagement in the battle and their desire for more stock.

Q Did you study Chris-Craft's financial conditions in August of 1969?

A Yes, sir, I have.

Q How much money could Chris-Craft have raised to purchase stock ?

A It depended upon really how serious they were about buying it. I think they could have raised a lot of money.

Q Did you study their note agreements?

A Yes.

Q Did you ~~say~~ know they were in default under their note agreements?

A Yes.

Q That didn't deter you?

A I also spoke with the banker who wrote the note agreement.

Q In using your 50 - 50 chance, did you take into consideration that Bangor Punta might have offered $5 a share more than your prospective purchaser?

A They might have.

Q Would that have affected your 50 - 50 chance?

A I don't think that they would have committed themselves to this course of action.

Q Who wouldn't?

A Bangor, by their own statement.

Q What do you base that upon?

A It is based upon a memorandum that I read. I trust it is an accurate reflection of their thinking that they would not commit fresh funds to this unless they were assured and convinced that they could get 50%.

Q Would you produce that memorandum?

MR. LIMAN: It is in Evidence as Exhibit 76. We have the actual exhibit. It is a bad copy. It is dated April 28, 1969, I believe.

Your Honor has your appendix. It is Exhibit 76.

MR. RYAN: The date on that, I believe, your Honor, is April 28th.

MR. AUSPITZ: I believe so.

MR. LIMAN: In that period. It is either the 26th or the 28th. I can't make it out.

MR. AUSPITZ: There is a better copy at Page 300, your Honor.

Q Is this the memorandum you are referring to? [Handing.]

A Yes.

Q Did you ever look at any other minutes of Executive Committee proceedings or any other documents concerning what Bangor Punta was prepared to pay?

A None that contravened this. None were shown to me. I didn't have access to their full minutes. This was shown

to me.

Q That's what you base your conclusion on, your assumption on, that Bangor Punta would not have increased its price $5 more than the next bidder; is that correct?

A It is in part influenced by this and in part by the fact that the probabilities for their gaining success are very slim. I don't think that Bangor would act in an irrational fashion.

Q In other words, you are saying that if Bangor Punta had offered $5 a share more than your prospective purchaser here at $72 your random selection of 50 - 50 chance would still be applicable?

A No. What I am saying is that unless Bangor Punta was prepared to get into a bidding contest -- obviously, if they pay more money, they have a better chance, but I suspect that that would be something they would consider long and hard because they have got to then view Mr. "X" as topping their bid.

Q Wasn't this essentially a bidding contest between Chris-Craft and Bangor Punta?

A Yes, it was.

Q And Bangor Punta was prepared, apparently, to pay a higher price than Chris-Craft?

A I don't know that they were prepared to pay a

higher price.

Q Did they, in fact, buy a higher price in shares?

A They paid $80.

Q Right.

A Yes.

Q That's higher than what Chris-Craft paid.

A Not markedly higher.

Q How high did Chris-Craft pay for its shares of stock? What was its average price?

MR. LIMAN: Cash?

Q Cash.

A Cash? I think that their average price must be in the mid-sixties.

Q And 80, $15 more per share, is not a significant increase?

A They had not committed a great deal of cash to the effort comparable to the amount of cash that Chris-Craft committed to the effort.

Q What does that have to do with somebody prepared to pay a higher price?

A I will tell you what it has to do as far as I am concerned: If I have a lot of cash committed to an enterprise and I put my reputation and balance sheet and everything on the line, and I have got an average cost of $65, I think that

I would not have been dissuaded from topping Bangor Punta's bid if they made a higher bid.

Q Chris-Craft did not, in fact, do that?

A They did not, because at that point in time they felt that the odds had shifted to a point where the 99 to 1 ratio favored Bangor rather than Chris-Craft.

Q Let's get on, Mr. Wahrsagor, to what you characterize as the discount for liquidity.

A Yes.

Q Did I understand your testimony to be that you were unable to arrive at what you considered the Chris-Craft 41% block to be worth on September 5, on or about September 5, when Bangor Punta acquired its 50% plus?

A It was my opinion that unless they were able to be furnished with a registration statement or a no-action letter there was no convenient way of distributing that amount of stock.

Q So your observation or expression of opinion is that on a private sale --

A To me, it is there. It is not something that I would want to pin all of my expectations on.

Q It is your testimony, as I understand it, because of what you consider to be the complications of the registration process and the financial statements that you

couldn't express an opinion as to what a public offering of Chris-Craft's block would have brought had it been made on September 5, 1969?

A I have some difficulty in reaching a conclusion having been mandated to sell it in September that I could have sold it in September.

Q Are there methods available by which, if you had assumed the hypotheses that it was sold public on September 5, 1969, could have arrived at what you would consider to have been the estimated market price?

A If you could have as your hypotheses that it could be sold and that was unchallenged, there are methods for determining the market price and, in fact, we have done that.

Q Even if you don't consider a sale but, for example, you use your Method E, which you used, you could have arrived at what the appraised investment value of Chris-Craft's 41% block was on September 5?

A Appraised value on September 5 would not have been markedly different from the appraised value on -- In other words, if we are talking about that kind of thing that doesn't change from month to month.

Q It would have been around $50?

A Yes.

MR. LIMAN: For 100 shares?

THE WITNESS: Yes.

Q Mr. Wahrsagor, you mentioned in your report on Page 18 that the problems which gave rise to the retrofit program were substantial or significant. I forget the exact language you used. You say that it is your judgment that such a disclosure, referring to the disclosure of the retrofit program, would have had a severe impact on the Piper shares?

A Yes.

Q Do you know what was involved in the retrofit program?

A What was ultimately involved or what the issues were?

Q What was ultimately involved in the retrofit program.

A As I understand it, ultimately it proved to be not so burning an issue as was felt by the parties at the time.

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Q Do you know what the reserve was that was set up for the Retrofit program effective September 30, 1969?

A I believe it was a quarter of a million dollars.

Q And it was increased on September 30, 1970 by another $65,000?

A Right.

Q So the total reserve on the books is approximately $315,000?

A Right.

Q Now, did that have a really significant impact --

A If that were the nature of the problem, I don't think that we would have made the comment. I think the problem was a good deal more severe than that. It seemed to me that the parties on the board, and I am trying to recall the minutes where I saw this, shared some very considerable concern about the magnitude of the problem.

Chris-Craft people wanted to establish a provision of some $[illegible] million, if I remember correctly. Then there was some question that Mr. Piper wanted to supply the retrofit kits at cost. There was some other issue where there were elements supplied at no cost.

If all that we are talking about, Mr. Ryan, is the quarter of a million dollars that is ultimately in-

volved, it was not such a burning issue. But what I am concerned about is what was going to be in the nature of the disclosure in the registration statement in September.

Q Just one other point.

Did I understand you correctly where, in your direct testimony, you stated that you didn't feel that you could use the relationship between Cessna and Piper without making an adjustment because of the --

A We are talking about two Cessna-Piper relationships. We were very comfortable using the relationship of Piper's price to ~~Cessan's~~ Cessna's price. When we looked at the relationship of Piper's PE to Cessna's PE, we felt in the absence of some appropriate adjustment such an index would not be meaningful.

MR. RYAN: Excuse me one minute, your Honor.

Q In your testimony on cross you stated that you believed that there were sources available for Chris-Craft to obtain sufficient funds in August to have continued participating in contest for control; is that correct?

A Yes.

Q Were you referring to the testimony by Mr. Burnham and his associate?

A No, sir.

MR. RYAN: I have no further questions, your

dhbr 3 Wahrsager-cross

Honor.

THE COURT: Any redirect?

MR. RYAN: I think at this time I would like to move to strike Mr. Wahrsager's opinion because it is based solely upon estimated market value, which is not consistent with the mandate of the Court of Appeals, your Honor.

THE COURT: That goes to the application of the legal rules that have to be applied here.

MR. RYAN: I am just preserving the record, your Honor. I agree it is a question of law.

MR. SHIMER: On behalf of the Piper defendants, I would like to reiterate the effort to discount the value of the shares by an alleged disclosure under circumstances where this Court has held no disclosure was necessary.

THE COURT: Any redirect, Mr. Liman?

MR. LIMAN: Do I assume there are no other questions from my colleagues?

MR.ARNING: No other questions on behalf of The First Boston Corporation.

I would like to join in the objection of the other defendants.

REDIRECT EXAMINATION

BY MR. LIMAN:

Q You made some comment on your cross examination concerning what you would have expected as an investment banker in Bangor Punta today if the contest had stopped for that moment in time with Chris-Craft in the lead by the margin thatyou have been assuming. Do you recall that?

A Would you refresh my recollection, Mr. Liman?

Q You testified that you would have thought that Bangor Punta would have hestitated to commit itself to a battle if the odds were --

A If the odds were as staggering as I suggest.

Q Do you, based on your experience as an investment banker, have some opinion as to what the likely course of conduct would have been for Bangor Punta if it desired control in circumstances where Chris-Craft had either a 41 to 31 per cent lead or 42 to 37 per cent lead?

A If Bangor wished control under the circumstances?

Q Correct.

A I would have thought they would have made some accommodation with Chris-Craft.

Q In a negotiation between Bangor Punta and Chris-Craft, do you have an opinion as to what Chris-Craft's

stock should have brought?

A It should have brought no less than $72.

Q In fact, do you recall what Bangor Punta paid for the Cornfeld Block?

A I believe they paid $80.

Q And you are familiar with what they committed to pay the Piper family if they got 50 per cent?

A They had a contingent agreement to pay the Piper family $80 assuming they got 50 per cent.

Q You also said that in reaching your conclusion concerning Chris-Craft's ability to proceed to 50 if it so desired, that you spoke to the Chris-Craft noteholder or you spoke to Chris-Craft's banker. Whom did you speak to?

A I spoke to a vice president of the Philadelphia bank whose name is Ed Potts.

Q Did you speak to Robert Potts?

A I am sorry, Robert Potts.

Q And he is the vice chairman of the bank?

A Vice chairman of the bank.

Q In expressing the opinions here, you saw the Bangor Punta prospectus on the exchange offer which is in evidence in this case, am I correct?

A Yes.

Q And did you observe the statement therein referring to Bangor Punta at page 31 "If it succeeds in acquiring at least the majority of the outstanding common stock of Piper, it would acquire the power to cause Piper to merge, consolidate, sell its assets or liquidate without concurrence of the remaining Piper common stockholders"?

A Yes.

MR. LIMAN: I have no further questions.

MR. RYAN: I have no further questions.

BY THE COURT:

Q In giving your statement of the statistical probability that Chris-Craft could have acquired the balance needed to obtain control, did you make any calculation as to the number of shares it would have to acquire and/or the proportion of the float that it would ~~ahve~~ have to acquire?

A Yes, sir.

Q What were those number of shares?

A I didn't personally perform the calculation.

Q I mean under your supervision.

A It was done by my colleague, Mr. ~~Siegel~~ Seigel, who is in the courtroom.

Q Do you know what the result of that calculation is?

A I know the final result being what I have testified to.

Q No, no, I am talking about the mathematics. I want to know how much of the float would --

A No, sir, I can't testify to that point. I was not personally involved in that.

Q Let us turn to something else.

Is it a fair assumption that control means the possession of the direction of the management and the policies of the company?

A I think that is a fair definition.

Q Is that to be equated with a majority of the board?

A I think it would normally -- not normally, but in some cases it could be so construed. In other words, I can visualize a case where one --

Q I am talking about absolute control, not working control.

A I am afraid I am missing something, Judge.

Q Can you have control of a corporation without having a majority of the board of directors? I am talking about absolute control, not working control.

A I think absolute control would connote the ability to control the board.

Q The majority of the board?

A The majority.

Q Certainly you would need a majority of the board of directors to vote for a merger, wouldn't you?

A I am just trying to think of a case where the majority would not vote for a merger. I would think that most mergers would require the affirmative vote of the board subject to the ratification of the shareholders, although that is a legal issue.

Q By "the board" you are still talking about the majority of the board?

A Yes, I would think that.

Q Now, in your evaluation of the statistical chances of obtaining control, was there any difference in those statistics when the relationships were 41-31 as against 41-38?

A No, sir.

Q Was there any difference when the relationship was 41-45?

A In ~~favor~~ favor of Bangor?

Q Yes.

A It flip-flopped the other way.

Q Did you evaluate the percentage of chance in those circumstances?

A Very high, approaching 99 per cent.

Q In other words, 99 per cent of the float?

A No. Talking about their chances prevailing where Bangor owned 45, Chris-Craft owned 41. They had an overwhelming preponderance of chance to achieve control.

Q Did your associate, Mr. ~~Segal~~ Seigel, estimate the number of shares needed out of the float under those circumstances to go over the top?

A I think you have to put that question to Mr. ~~Segal~~ Seigel.

Q Is it a fair assumption that the value of the opportunity to obtain control is measured by the value of the use to which it would be put subject to such discounts as cost and time factors?

A The value of the opportunity togain control, is it fair to relate that to the purpose for which it is put, less --

Q The value of that purpose.

A Your Honor, I don't understand what you are getting at.

MR. LIMAN: I think you misspoke. You said cost of thatacquisition. When you restated it, your Honor, you restated it differently.

THE COURT: I didn't say that. I will state to you exactly what I did say. It will be in the record.

Q Is the value of the opportunity to obtain control measured by the value of the use to which it would be put discounted by the cost and time factors involved?

A Your Honor, that is a very theoretical formulation. And I am not really sure what it means.

Q How would you value the opportunity to obtain control if it were not in terms of what you could get out of it?

A I think that I understand better.

Q Therefore, it is measured by the value of what you get out of it;

A Yes, that seems reasonable.

Q The value of what you get out of it is to be considered in the light of how long it takes you to get it, get what you get out of it, and how much it cost you.

A Yes.

Q Those are the discount factors?

A Yes.

Q It is not theoretical. That is actual?

A Well, as you put it in folksier terms, I think I comprehend it.

Q Right.

Q When you pay a premium for control, do you measure that on the total dollars involved or do you do it on a per

share basis?

A Premium for control.

Q If you were going to go out and pay somebody for control, a premium, would you consider the gross dollars that it would cost you?

A Yes, sir.

Q You wouldn't start the consideration from the point of view as to what you would pay to get a hundred shares?

A For the last hundred to put you over the top, you mean?

Q Either the last or the first.

A No, I would say --

Q The overall cost.

A -- necessary in order to achieve the objective.

Q Has anybody told you what Chris-Craft's purpose was and what value enhancement they expected from this control venture?

A No, sir.

Q Have you any way of estimating dollar wise what benefit they could reasonably have expected from being in a position to manage the company and its dividend policies?

A No, sir.

Q Would you, as an expert, appraise a block in a merger situation on the same basis as the appraisal that you have used or the valuation that you have used in the figures you gave me?

A You are talking about the figures that I have given you?

Q Yes.

A When we are asked to opine as to the fairness of a merger, what criteria do we use?

Q The appraisal of value for merger purposes.

A No, I think it is somewhat of a -- some of the same calculations would be done, some different calculations would be done. I don't think --

Q In appraising value for merger purposes, you appraise the value of the stock or the block as of the day before the event, don't you?

MR. LIMAN: Your Honor, are you talking about his appraising it as if he were in an appraisal procedure or he appraising it as an investment banker in terms of fairness of the terms.

THE COURT: No.

MR. LIMAN: He is speaking to the latter, your Honor.

THE COURT: I think you are quite correct, Mr.

Liman. I am talking about appraising it for the purposes of an appraiser in a merger.

A I have really never been engaged in that kind of activity.

Q You have had no merger appraisal experience?

A No, sir.

THE COURT: All right.

MR. LIMAN: Could I pick up, your Honor, on some of your questions?

THE COURT : Yes.

BY MR. LIMAN:

Q When you were referring before to appraising for merger, you were talking about appraising in terms of opining whether the terms of a merger were fair to the shareholders --

A Fair and reasonable to the shareholders being merged out.

Q Right.

A Or to the shareholders who were going to be the continuing shareholders.

Q Am I correct that in expressing your opinion that Chris-Craft's block, with the lead position, had a value of some $72 a share, you were aware of what Chris-Craft's cost was in assembling that block?

A Yes.

Q And you were also aware of what Bangor Punta had committed in terms of the agreement with the Piper family?

A Yes.

Q And you didn't inquire of Chris-Craft what values it saw in gaining control of Piper, am I correct?

A I didn't make such a --

Q And you didn't inquire of Bangor Punta of what values it saw in gaining control?

A No, I didn't.

Q But you did read the prospectus on the exchange offers of both companies?

A Yes, I did.

MR. LIMAN: No further questions.

Thank you.

THE COURT: Is there any reason for this gentleman coming back involuntarily? Or can he be excused to do his other duties?

MR. ARNING: He can be excused as far as we are concerned.

MR. SHIMER: We have no further questions.

MR. RYAN: No further questions.

THE COURT: They say if you want to be a spectator, you can be a spectator, but they don't need your appearance in court.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

THE COURT: We will recess now until 2:15.

(Luncheon recess.)

AFTERNOON SESSION

2:15 p.m.

MR. LIMAN: May it please the Court, your Honor, I would like to have typed up these figures under percentages that each would have had to get on these different assumptions, and I will produce that tomorrow. Mr. Segal will be here then. I have this on foolscap.

I call Dr. Murray as my next witness.

R O G E R F . M U R R A Y , called as a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. LIMAN:

Q Dr. Murray, your qualifications are set forth in the report that you rendered?

A They are.

Q Would you just, briefly, review them with us.

What is your present occupation, sir?

A I am a professor of finance at the Graduate School of Business of Columbia University. I occupy the Sloan Colt professorship of banking and finance.

Q Are you the first occupant of that chair?

A Yes.

Q When were you appointed to that chair?

A In 1958.

I was re-appointed to it in 1971, after I had been away for six years.

Q During those six years, what position did you hold?

A I was executive vice president, trustee, and chairman of the Finance Committee of the College Retirement Equities Fund.

Q Is that what is referred to in your qualifications as CREF?

A That is known as CREF, yes.

Q What is CREF?

A CREF is the variable annuity retirement system for higher education.

Q What is its portfolio?

A Its portfolio consists entirely of equity securities.

Q What was the amount of this portfolio at the time that you were the head of it?

A When I first began to serve full time -- I had been a trustee of CREF for a number of years previously -- when I first became the portfolio manager in 1965 it was about 500,000,000. When I finished it was something over a billion and a half in assets.

Q Did you have responsibility in that position for making investment decisions?

A Yes, I did.

Q Have you held other positions in which you have had to either make investment decisions or establish investment policy?

A Yes. I guess throughout my entire life, except for my period of Military Service, I have been since I started making investment decisions.

Q What positions do you hold today while you are the Sloan, Colt professor of finance at Columbia that requires you to make investment decisions?

A I serve as a trustee and member of the Executive Committee of the New York Bank for Savings.

I serve as a trustee of the Common Fund for Non-Profit Organizations, as trustee, chairman, of the Finance Committee, and Investment Committees of Smith College.

I am concerned with that college endowment.

I serve as a director of the Chemical Fund, Surveyor Fund, Alliance Bond Fund, and I serve as a director and president of the Fund for Mutual Depositors. In all of these capacities I am directly involved in making decisions about securities.

In a number of other situations I serve as an advisor, or one of a panel of advisors to those specifically

making the decisions.

Q What courses do you teach at Columbia?

A I teach security analysis, portfolio management, capital markets, and from time to time I have taught courses in corporate financial policy and money and banking, and certain related areas.

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Q Have you ever testified as an expert on matters involving security valuation and in the securities management area?

A Yes, I have.

Q What was your most recent experience in testifying?

A I guess the most recent was in the case of Blankenship et al vs. Boyle.

Q That was before Judge Gesell in Washington, D.C.?

A Yes, it was. It was a case involving the United Mine Workers pension fund.

I assure you I testified for the plaintiff and not for the defendants.

THE COURT: Is that because of political predilection?

THE WITNESS: That's where I thought the rights were, sir, in the issues.

THE COURT: In other words, you accept your engagements only where you think you are right?

THE WITNESS: Yes, sir.

THE COURT: Regardless of where the expertise is called for?

THE WITNESS: I try to be of some service, sir, wherever I think I can contribute to the straightening out of the issues.

THE COURT: By the way, I think your credentials are magnificent.

I would like to know how much time you spend on each of these places where you hold these posts of occupation and honor.

THE WITNESS: My wife complains bitterly, sir, about the length of my work week because, as you can see, it is a sixty or eighty-hour week rather than the conventional week.

THE COURT: How much time do you think you put in teaching?

THE WITNESS: This term I am teaching three courses and we figure that you have two hours of preparation for every hour of classroom, and then you ought to have an equivalent number of hours for office hours that you have in the classroom. This gives me nearly a forty-hour teaching week and with related activities, so most of the other activities I have to do by extending the week.

MR. LIMAN: I suspect your wife's complaints are familiar to this Court.

THE COURT: I don't know the lady.

BY MR. LIMAN:

Q Were you asked to express an opinion as to the value of Chris-Craft's holdings in Piper Aircraft Corporation in early August and then in early September of 1969 under certain circumstances?

A Yes, I was.

Q Were you assisted in your report by anybody?

A Yes, my colleague, Professor Henry Reiling, also of the Graduate School of Business faculty, has collaborated with me and has been of great assistance in preparing this.

Q Do you have any familiarity with the light aircraft industry?

A I have a general familiarity that one has as a security analyst and as an investor having been, from time to time, over the years, an investor in the field.

When I was at Bankers Trust Company, I particularly specialized in aviation finance and, as a consequence, over the years, I got to know many of the personalities and leaders of the industry.

Q Including --

A Including the elder Mrs. Piper, the Beeches,

husband and wife, and the Wallaces of Cessna, the two brothers.

Q In preparing your report, did you proceed independently of our other experts?

A Yes, I did.

Q You reached your conclusion and prepared your report without seeing their reports?

A That's correct.

Q That was your assignment?

A That was my assignment.

Q What materials did you review in reaching the conclusions which you have expressed in your report?

A I reviewed the reports made by the experts, Mr. Fitzgerald and Professor Bellemore, as part of the materials from the previous trial and the general excerpts from the testimony from that trial.

Q Did you also read the decision of the Second Circuit?

A Yes, I did.

Q Dr. Murray, I ask you this question and I am going to use the percentages reflecting the numbers that were submitted to the Court this morning:

Assume that on August 7th, 1969, Chris-Craft held approximately 40.6% of Piper stock.

Assume further that on that date Bangor Punta owned 30.5%, which is the percentage it owned less the shares that the Court of Appeals declared unlawfully acquired.

Finally, assume that the balance of Piper shares were still held by parties other than Chris-Craft and Bangor Punta.

On those assumptions, Dr. Murray, are you able to express an opinion as to the market value of Chris-Craft stock on August 7, 1969?

A I am.

Q What is that opinion?

A In my opinion the fair market value on that date on those assumptions was $57 a share for any round lot of Piper Aircraft stock.

Q What is your opinion as to what the market value of the Chris-Craft block was on that date?

A On that date, in my opinion, the market value of Chris-Craft's block of Piper was also $57 per share.

Q Dr. Murray, I now refer you to September 5, 1969. I ask you to make these assumptions: That Chris-Craft held on that date 42.4% of Piper stock; that Bangor Punta held 36.6%, which is the sum of shares it actually held less those which ~~is the sum of shares actually held less those~~

~~which~~ the Court found to be unlawfully acquired; and that the balance of approximately 21% were held by others than Chris-Craft and Bangor Punta. Would your expressions as to the value of Chris-Craft's holdings be the same or different from the ones you gave just before?

A Provided the control fight was still continuing, in my opinion there would be no change in the fair market value of either an individual round lot holding or of Chris-Craft's holding.

Q If the control contest had not been resolved on that date, your opinion would be what for the value of Chris-Craft's holdings?

A $57 a share.

Q Would you tell the Court, step-by-step, how you arrived at the conclusions which you just expressed?

A The process which I used is a widely accepted approach to valuation when there is no longer a fair free market valuation being determined through active trading unaffected by concentrated buying or control factors.

What one does is to determine the relationship between the price of a particular company and companies like it or a general average of share prices.

By applying that relationship to the period in which a market value is being reconstructed, it is possible

to arrive at a rather accurate representation of what the market value would have been if it had been trading in its regular persistent relationship to the market as a whole or to companies in similar lines of business.

t2 pm

This is the procedure which we followed in our analysis. It is very close to the procedure which was followed by Mr. Fitzgerald in his expert testimony.

Q In determining a market value as of May 1969?

A In determining the market value as of May.

I was updating this to August and September by substituting the later values for the relevant price earnings ratios and reported earnings of Piper Aircraft.

This resulted in calculating a price earnings ratio for Piper which in April -- excuse me -- which in August and September of 1969 was a 25 per cent premium over the price earnings ratio of the Standard & Poors 425 industrial stock index, and a 57 per cent premium over the price earnings ratio of Cessna, using Cessna as a comparable company in the same line of business.

Applying those premium price earnings ratios to the ~~most recently reported earnings ratios to the~~ most recently reported earnings of Piper produced the market value of $57 a share for August and September of 1969.

Q Dr. Murray, did you, in reaching the conclusion as to the appropriateness of using the relationship between the Piper multiple and the Standard & Poors multiple in predicting a market price, form any opinion as to why Piper during the period was selling at a higher

multiple than the Standard & Poors and Cessna multiples?

A Yes, I did.

Q Would you explain to the Court what your conclusions in that regard are and on how you reached them?

A Beginning in the second quarter of 1967 and continuing through 1968 and 1969, there was an extremely active period of mergers and acquisitions --

THE COURT: Just a moment. Give me those dates again.

A Beginning in about the middle of 1967, along about the second quarter of 1967, well into -- through 1969, was one of the most active periods of mergers and acquisitions that we have ever seen. This was part of a widespread interest in what became known as the conglomerate form of enterprise. And during this period there was not only a great growth in the number of conglomerate enterprises and in their size, but there became widespread enthusiasm for this concept of business organization and structure.

In this period naturally with this much interest and activity, and this tremendous access to the capital markets, investors and traders and speculators and all participants in the marketplace were constantly on the watch for attractive candidates for acquisition.

Piper Aircraft met all of the specifications of an attractive candidate.

It was in what was called a glamor industry, namely, general ~~acquisition~~ aviation; it had a leisure time aspect to its market, it was engaged primarily in making smaller aircraft for individual use, it was not involved to any major extent or even to a minor extent in government contracts and orders, it was potentially available for acquisition purposes, and --

THE COURT: ~~When~~ Why was that?

A I would say if you looked at the three companies in the industry, ~~Beaches~~ Beeches had a very strong proprietary interest and the original ~~Beaches~~ Beeches were still active; the Wallaces, the Wallace Brothers, had a similar position at Cessna, but the original Mr. Piper was no longer the dominant directing individual in Piper Aircraft.

THE COURT: Is that whatyou mean by available?

A So that the Piper Aircraft in the minds of investors was quite approachable, whereas everyone knew that the Wallaces and the ~~Beaches~~ Beeches wouldn't be inclined to entertain any proposals for acquisition.

So it was not only the characteristics of the company but the change in the control position and in the ~~familiar~~ family position that made it in the minds of potential

investors more available. It was in that sense that I was using the term.

THE COURT: A target for takeover, exactly.

Q In your opinion, when a company was perceived as a target for takeover in this period of '67 through '69, did it have an effect on its multiple --

A It certainly did. One measure of that effect is what was happening to the prices of shares of conglomerate companies. I used in my report a measure, the conglomerate index is kind of a measure of the enthusiasm for the conglomerate type of enterprise, and it was those attractive prices in the marketplace that made it possible for the acquisitive companies to pay fancy prices and premiums for companies that they wished to acquire.

Q Is conglomerate value, as you used it in your report and as you have been describing it now in terms of the value that the market attached to a company which was a candidate for takeover, the same as control value?

A No. Control value is something different.

Q In assigning the value of $57 a share as the market value of Chris-Craft's lead position in the two situations that I have posed to you, have you included in that figure anything for control, any premium for control?

A I guess you would have to say yes, that I did

include some recognition of the control position, ~~but I was also recognizing some~~ -- which would be a positive addition to value, market value -- but I was also recognizing some negative implications for market value, represented by the size of the position.

Q Would you explain what you mean when you recognize one factor and you recognize others?

A on the positive side, we were taking account of the fact that in the competition for control Chris-Craft was in the lead, and the lead was a very substantial advantage. ~~when~~ When ~~if~~ you are leading by 10 points or even 6 points if the remaining shares available for acquisition are down below 30 per cent and below 25 per cent, that lead is very substantial and there has to be a substantial value attributable to that leadership position.

That is the positive aspect of this determination of fair market value that I tried to take into account.

There is also the negative side which reflects the fact that if one should not win the contest, despite the leadership position, or if the determination of the outcome should be long delayed, the fact was that the holder of that block had a very large and ~~possible~~ possibly difficult-to-market block of securities. Just as if when you are seeking control, it is a greatadvantage to have

that accumulation of shares in one place.

If for any reason, if perhaps for some reason totally unrelated to this particular contest, one wished to dispose of the block, he would have to relize that this could create a serious liquidity problem, of trying to place such a large block of stock at any particular point in time.

Q Dr. Murray, in reaching your conclusion that the Chris-Craft block had the market value of $57 a share, did you balance those considerations?

A I balanced those considerations, yes, sir.

Q Does the $57 a share figure represent your best judgment of what the Chris-Craft position was worth?

A It does.

Q You have been sitting here for part of the morning, and you heard the figures as to what the circumstances really were on August 7th, namely, that Chris-Craft on that date had 40.6 per cent, and Bangor Punta had 44.5 per cent, roughly, of Piper's stock. That is the way it actually stood then including the blocks that the Court of Appeals found to be illegally acquired.

In your opinion, Dr. Murray, was Chris-Craft disadvantaged by the way in which it actually stood on that date as opposed to the way it hypothetically would

have stood had Bangor not acquired those blocks found to be illegally acquired?

A Very seriously disadvantaged.

Q In what sense, sir?

A What I was speaking of a moment ago as the lead position, of course, was eliminated entirely by the new set of facts which you just recited. And this left the disadvantage of having the large block without the potential advantages of being in the lead position in the contest for control.

Q Based on your observation of market behavior during this period, if the contest had stood at 40.6 for Chris-Craft, and 30.5 per cent for Bangor Punta, and Bangor Punta still wanted control, what would you have anticipated would have happened?

A I would have anticipated that one of two things would have happened:

That Bangor Punta would have made a deal with Chris-Craft and then offered the same deal to the remaining shareholders, or vice versa, Chris-Craft would have made a deal with Bangor Punta, with an offering to the remaining shareholders on an equivalent basis to resolve the contest and go ahead with the integration of Piper with either of these two conglomerates or there even could have

been a third party entering the picture at this point and saying that that third party, possible another conglomerate, would offer both Bangor Punta and Chris-Craft and minority shareholders an attractive package of securities in order to complete the acquisition of Piper.

Q Now, in your opinion, with Chris-Craft having a 10 point lead, ~~is~~ it your testimony here that the price that Chris-Craft 's block would have commanded if Bangor Punta wanted to buy it would have been the figure that you gave, $57 a share?

A If ~~there~~ they had come to a -- if they had come to that point and Bangor Punta was prepared to make and offer to Chris-Craft, I would anticipate that there would indeed be a premium above the $57.

Q In what way were the circumstances changed in terms of the likelihood of making a deal with Chris-Craft when Bangor Punta ended the exchange offers with a 44.5 to 40.6 per cent lead?

MR. RYAN: Your Honor, this whole line of questions here is on supposition, speculation, as to whether a deal wouldn't have been made between the two parties. I say it is totally irrelevant to the issue before the Court. What this man's guesses as to what would have happened is a guess, it is not expert opinion.

THE COURT: I will take note of that.

Q Dr. Murray?

THE COURT: And give it such value as it deserves.

Q Dr. Murray?

A Could I have the question reread?

(Question read.)

Q I should say in terms of the incentive to make a deal on the part of Bangor Punta.

A Of course, the incentive was not nearly as strong once the leadership had been taken over, and when Bangor Punta wasnow in the lead, instead of Chris-Craft being in the lead.

Q Have you formulated an opinion as to what Chris-Craft's holdings on September 5, 1969, were worth in terms of market value after Bangor Punta gained more than 50 per cent of Piper's stock on that date?

A I have.

Q Could you tell the Court what your opinion is?

A In my opinion, after the event the fair market value of Chris-Craft's holdings of Piper Aircraft were approximately $20 a share.

Q Would you tell the Court how you have arrived at that figure which is so substantially below the figure

thatyou assigned for their position when they were in a lead state?

A We arrived at that figure really in two steps:

The first step occurred when there was not a complete resolution of the contest for control, and there were not -- in other words, when the ~~control~~ control fight ~~data~~ was no longer continuing, and when it was apparent that Piper Aircraft was not going to be acquired, merged, in the immediate future into either of the companies or into any third possible ~~entry~~ entity, at that point, Piper was no longer what it had been, namely, an attractive take-over candidate for acquisition, moving toward that event.

It was clearly -- clear in the first instance that the additional values attributable to merger and to integration into a diversified enterprise were not about to be achieved; that is to say, Piper at that point had a market value simply as a free standing typical general aviation company, comparable now, let us say, to a Cessna or a Beach or any other independent enterprise.

And this meant, to calculate that value, that one should go to the price earnings relationships that ~~prevailed~~ prevailed prior to the period of enthusiasm for conglomerates and for acquisitions, namely, the kinds of price

earnings relationships that prevailed prior to 1967. Using those relationships, and these are substantially those used by Mr. Fitzgerald, one would say that the fair market value of a round lot of a hundred shares, of Piper would be on the order of $36 a share.

But, of course, what Chris-Craft owned at that point was not a few hundred shares of a free standing enterprise called Piper, not in the process of being merged into Bangor Punta, Chris-Craft or any other larger enterprise, but what it had was an unmarketable minority position which offered all of the problems of blocking potential acquisiton, but not offering any alternative to being locked in for an interminable position, interminable period in this minority position.

The other major factor that was destructive of the value of Chris-Craft's block of Piper stock was the fact that Piper could proceed with a merger proposal at the timing of its own choosing.

Because of the cyclical nature of the general aviation business, there was an excellent possibility that Bangor Punta would be afforded the opportunity to come forward with a merger proposal at a time when Piper was going through one of its cyclical down turns. These down turns were characterisitc of the general

aviation business itself and of Piper's activities and of Piper's competitors throughout their history.

Q What this meant was that Chris-Craft, being locked into this position, did not have a ready ~~mistake~~ escape -- ready escape ~~thorugh~~ through marketing its shares, but was locked in for a period of indefinite duration on terms that could not be predicted. Except, it could logically predict that there ~~couldn't~~ wouldn't be a merger offer at a time most advantageous to Chris-Craft. Obviously the timing of that merger proposal in the hands of Bangor Punta would be made at that point in time which was most advantageous to Bangor Punta.

This left Chris-Craft as a limit on the down side risk and exposure of its large investment in Piper to the very uncertain and difficult and sometimes obscure provisions of the legal appraisal statutes of Pennsylvania in the event that Chris-Craft objected to merger terms offered by Bangor Punta and sought this relief.

Q Have you ever participated in an appraisal proceeding in any jurisdiction?

A Yes, I have in Delaware.

Q Which one, sir?

A This was the Universal Pictures appraisal case, where I served as a consultant to the lawyers for Universal

Pictures.

Q Are you familiar with the formula of appraisal in Delaware as outlined in Mr. ~~Bink's~~ Lank's report?

A Yes, I am

Q Did you make some estimate in determining what the market value of Chris-Craft's position was as to what a reasonable buyer may have anticipated that he would receive in an appraisal for a merger compelled at the time of Bangor Punta's choosing?

MR. RYAN: Excuse me, could I have the question read back, your Honor?

(Question read.)

MR.LIMAN: I don't think I said that.

THE COURT: I think that is exactly what you said. That was the reason for the read back.

Q Did you, in the market value of Chris-Craft's stock, give some consideration to what appraisal award a reasonable investor might have anticipated in the light of the factors that you have just been outlining?

A I did.

Q What conclusion did you reach and how did you arrive at it?

A I concluded that given the uncertainty as to the timing and terms of any appraisal proceeding that an

investor considering the Chris-Craft block of stock would have to discount any expectations significantly for the expenses and time involved in the appraisal proceeding.

I also recognized the fact that even ~~if~~ with a liberal interpretation ~~in~~ of the Pennsylvania statute to the question of earning power and to comparative price earnings ratios, one could not anticipate an appraisal ~~value~~ value which, when brought down to the present and properly discounted for the lag in time and the cost and the uncertainty of that determination, would give a potential buyer any confidence that he could look to any more than 25 or 26 dollars a share in terms of down side protection if he were to acquire Chris-Craft's block of Piper stock.

Q Did you conclude that that would be the price that a reasonable buyer would have paid for Chris-Craft stock on September 5th, after Bangor gained 50 per cent of Piper's stock?

A What I concluded was the reasonable price was $20 per share.

Q Why?

A Let us suppose, just for illustrative purposes, that the appraisal value worked out to be the book value of $23 a share. If that were recovered in approximately four years or so, which would not be lengthy for some of

the proceedings that do take place, this would have a present value significantly below $20 a share.

So that even some weight given to earning power value in excess of net asset value, when again discounted for the delay in achieving that, would produce relatively little downside protection for an investor.

Q Is it your best judgment, then, that $20 a share represents the price that a reasonable investor would have paid for Chris-Craft's position on September 5, 1969?

A Thatis my best judgment.

Q Dr. Murray, in your opinion, as a man who has been involved in portfolio management of many, many illustrious ~~illustrative~~ institutions, would they have been likely buyers of Chris-Craft stock?

A Definitely not.

Q Would they have been likely buyers of Piper's stock if a public offering had been effected by Chris-Craft?

A Not under those -- not under the circumstances where it was impossible to tell whetherone was buying shares in Piper, buying an unknown package of securities from Bangor Punta, or buyingthe right to bring an appraisal prcceeding in the Pennsylvania courts.

THE COURT: Does that mean that institutions

do~~esn't~~ not buy minority positions?

A They will buy minority positions provided they have some assurance as to what is taking place.

For example --

THE COURT: Suppose nothingis taking place, you just want to buy a block of stock which has a good earnings potential, do you mean to say thatyou consider whether there's going to be an appraisal or a lockout or a buy-out?

A If someone has an absolute majority control and is ~~given~~ giving every evidence from the beginning of that acquisition program, that merger is the objective of that acquisition, then clearly one would have -- one wouldn't be a willing buyer of that minority position unless the terms of the merger were known in advance.

THE COURT: Wait a minute. Does that mean that when you buy a minority interest in a triple A corporation that has in mind merging another corporation that you don't ~~evalue~~ evaluate the prospects of the acquiring corporation?

THE WITNESS: But --

THE COURT: But you think only in terms of what the merger terms are?

THE WITNESS: You have got to think in terms of what the merger terms are.

THE COURT: You can also remain an investor, can't you?

THE WITNESS: Not when the other controlling shareholder has got in excess of 50 per cent control.

THE COURT: I thought merger always implied the issuance of another stock or else appraisal for what you had.

THE WITNESS: Yes, sir, indeed.

THE COURT: If the other stock happens to be in a triple A corporation, you mean to say you should stand by and worry about what the appraisal dollars are?

THE WITNESS: No, sir, but -- not if I knew what the terms of the merger were. But your Honor, if I don't know what the terms of the merger are, then I want to know what is my downside risk. And that is when I might be looking to see what comfort I can get from my appraisal rights.

But, of course, if I know what the terms are that are going to be offered to me in the merger and the acquiring company is a top-flight company, I would then be perfectly willing to buy the shares of the target company.

THE COURT: All right.

3/1 pm

THE COURT: You may proceed.

BY MR. LIMAN:

Q Do you know any services that rated Bangor Punta as Triple A?

A No, sir.

Q Did you form an opinion --

THE COURT: I thought the doctor's testimony here was not about Bangor Punta but was on some kind of professional theory.

MR. LIMAN: It was.

THE COURT: I didn't give any indication of what I thought, that either Bangor Punta or Chris-Craft was Triple A.

Q Dr. Murray, did you form an opinion, when you arrived at what your conclusion was, as to what an appraisal award might yield?

A Yes.

I was influenced by two factors, one the many recitals of the multipliers suggested by Arthur Stone Dewing, which had a major role in determining those kinds of appraisals, and then, of course, I was thinking in terms of my recent experience in the Universal Pictures case where the final determination used a prevailing industry multiple, and this would suggest as one possibility that the multiple

in an appraisal proceeding would be perhaps as low as an Arthur Stone ~~Doing~~ Dewing 8-1/3 times or perhaps as high as twelve times multiple derived from Cessna.

My concern about the salvage value in an appraisal proceeding, was actually less derived from the price earnings ratio that might be used and more from the timing, because my presumption has to be that Bangor Punta's proposal could well come, could easily come, at a time when the preceding five years' average earnings would be significantly lower than they would have been in the proceeding in the fall of 1969 because as had happened to Piper before and could happen again, Piper could have a couple of years earnings well below the five-year average of approximately $3 a share that was of record in September, 1969.

Q That's inherent in a cyclical company?

A Yes. Absolutely.

Q Is the term "intrinsic value" a term that is used in your profession?

A Yes, it is.

Q What does it mean?

A This term has been most widely developed by my distinguished faculty colleagues, Benjamin Graham and David Dodd in their text on security analysis, and they define it

as the value justified by the facts, justified by the economic factors, one might say, such as earning power, dividends, returns to the owner.

Q Is intrinsic value something different from market value?

A It is usually different from market value in the sense that it represents a kind of economic value, an investment value, a central value around which market prices can, and do, fluctuate rather widely. Presumably, if the market price is not subject to manipulation and is not carried away with emotional and irrational kind of behavior, market price should fluctuate around intrinsic value across time, but in any instant of time, at any particular moment, market price and intrinsic value may not necessarily coincide.

Q Are there synonyms in your profession for intrinsic value?

A Yes. Investment value is one. Economic value is a term sometimes used.

Q You have read Mr. Fitzgerald's report; am I correct?

A Yes.

Q Did he make an intrinsic value computation for Piper as of September, 1969?

A Yes. He did one as of September.

Q Did I ask you on the same assumptions which Mr.

Fitzgerald made as to Piper's earnings being $6 a share in 1973 to express your opinion as to the intrinsic value of Chris-Craft's Piper holdings on August 7th, 1969 and September 5, 1969, on the assumptions previously outlined that Chris-Craft led in the control contest either by the 40.6 to 30.5% or the 42.4 to 36.6%?

A You did.

Q Would you express your opinion as to what the intrinsic value of those holdings would have been and how you arrived at it?

A In my opinion on that set of assumptions the intrinsic value of Chris-Craft's position in Piper would have been worth $68 per share on both of those dates.

Q How did you arrive at that? You can contrast, if you wish, that to Mr. Fitzgerald's approach.

A Mr. Fitzgerald, for his price earnings ratio in 1973, to determine the value at that time of the $6 earning power, used the relationship between the Piper price earnings ratio and the Standard & Poor's index price earnings ratio that prevailed back in 1963 and in 1966 before the period of active acquisitions and before the time when merger and acquisition conglomeration took place. This ignored the situation in which Piper actually existed at the dates given in your question.

I substituted, therefore, the relationship derived from the conglomerate period, namely, Piper selling at the 25% premium in price earning ratio over the Standard & Poor's index in arriving at the 1973 value of a share of Piper earning $6. Then I applied Mr. Fitzgerald's 15% rate of discount. I applied it on a quarterly discounting basis rather than his annual discount basis, to bring back to August and September of 1969 the calculated present value of Piper as a conglomerate member realizing on the expected $6 per share of earnings in 1973.

3/2 Q Did you, at my request, make an effort to determine what the intrinsic value of Chris-Craft's Piper's holdings would have been after September 5, 1969, when Bangor Punta gained more than 50% of the stock of Piper?

A I did.

Q What was your conclusion and how did you reach it? In what sense is it different from Mr. Fitzgerald's conclusion?

A My conclusion is that the intrinsic value of the Chris-Craft block after Bangor Punta's ownership of more 3/3 than 50% had been completed came to $27.44 per share.

What I did was to follow, in essence, the same procedure that Mr. Fitzgerald followed in arriving at what I referred to in my market value calculation as a free standing value or the value of Piper as an independent ongoing

enterprise not being combined with any other industrial corporation.

That would be -- and this is a figure of $40.80 -- directly comparable except for the precise method of calculation with Mr. Fitzgerald's $42.10 as being the free standing value of Piper for any holder of 100 or a few hundred shares of stock.

THE COURT: Would that also be the value that you would ascribe to the ownership by each, Chris-Craft and Bangor Punta, of 49% of the stock of Piper?

THE WITNESS: This, your Honor, is where neither has control?

THE COURT: That's right.

THE WITNESS: So Piper is operating, in effect, under its own head of steam and they are both just investors in it.

THE COURT: Free standing value?

THE WITNESS: Yes.

THE COURT: In other words, your figures then would be $36 on the market value theory and $40.80 on the intrinsic value area?

THE WITNESS: Yes, sir.

THE COURT: And the addition of control is what you say boosts the figure to your higher numbers,

$58 -- was that the figure you used?

THE WITNESS: $68 on my intrinsic value basis.

THE COURT: No, no. $68 is when the control fight is continuing.

THE WITNESS: The reason why that is significantly higher is that it does presume that somebody is going to control it.

THE COURT: I am back to your earlier testimony. I thought you had given me the figure that after the acquisition of enough of a majority to create control you placed a figure of $57 on the block of Piper stock held by Chris-Craft. Was I mistaken in that?

THE WITNESS: You are quite correct.

THE COURT: So that the comparison then is $40.80; each of them has 49%, but when one goes over the top it is $57 and not $68?

THE WITNESS: Sir, in market value $57; in intrinsic value, $68 if someone, anyone -- it could be Bangor Punta, it could be Chris-Craft, a third party, takes Piper and integrates it into a larger enterprise.

THE COURT: I am taking it away from that assumption. I am taking your words, "free standing value" and trying to understand what that means in a context where it is a standoff on the question of control.

THE WITNESS: That is what I mean, sir, by free standing value.

THE COURT: Repeat those again. When neither side has control, what values do you ascribe and what labels do you ascribe to those values?

THE WITNESS: I have an estimated market value of $36 a share and an intrinsic value of $40.80 on the assumption that no one has control, no one is about to get control. Piper is operating on its own, it is operating like Cessna. It is under independent management going about its business, however that management chooses. No one is changing management, no one is changing corporate structure, no one is making decisions related to corporate strategy and corporate management resources that can be applied if Piper is integrated into the conglomerate enterprise.

THE COURT: You say that no one is creating strategy? You mean where one side does not overbear the other side?

THE WITNESS: Correct. This is the standoff, in effect.

In the figures you gave me, sir, I am assuming that they go out and argue with each other and nobody does anything because no one has the upper hand.

THE COURT: What are the components of a

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calculation of intrinsic value?

THE WITNESS: The components here --

THE COURT: The category.

THE WITNESS: Basically, in intrinsic value, what we are trying to value is a future earnings stream. We are looking at a company or a share of stock almost the way we would look at a piece of real estate.

THE COURT: That's equated to investment value?

THE WITNESS: Yes. We are not saying: What can I sell it for today when everybody is discouraged or tomorrow when everyone is very optimistic? What is the kind of economic value here?

Given the expected level of earning power, given the risk associated with that, is this a very stable business or is this a very risky business?

Is there a big hazard that somebody will outmode us with a new technology, things like that?

What we are trying to take account of in our intrinsic value is the ingredients of economic value where you are looking at risk and return and rates of growth, and the degree of confidence and safety that you feel is associated with those characteristics.

THE COURT: How do you, in fact, explain such things as assets?

THE WITNESS: Basically in intrinsic value one says, "I am not going to count assets as assets are worth what they earn."

If I may --

THE COURT: It is an earning power?

THE WITNESS: It is an earning power, exactly.

THE COURT: I didn't mean to cut you off. I thought I understood what you were saying.

THE WITNESS: In market value we are trying to take account of people's kinds of expectations and ~~there are~~ their fears and sometimes ~~they~~ there are very temporary emotions.

THE COURT: But you do not get market value when two people have 49% a piece?

THE WITNESS: That's correct. Under those circumstances the only way we can get a "market value" is really to try to structure one. This is really what the market value calculation is, my calculation, Mr. Fitzgerald's calculation, and others; we say you cannot look in the marketplace and find a market value for Piper by August and September when there is this little tiny bit of stock.

THE COURT: What do you distill it from?

THE WITNESS: We can say that, well, Piper used to sell about in line with Cessna. We might say that, for example. And now we say, okay, where is Cessna selling?

Piper has originally been selling at a handsome premium. Before the contest for control, Piper was at a premium relative to the Standard & Poor's. Let's apply the same premium to the current Standard & Poor's PE ratio and we have a pretty good assurance. We know we have not got anything quite as precise as though we could look in the daily transactions where we have a lot of volume of willing buyers and sellers, but I think we can come very close to this, and this is a technique that, of course, all of us have used many times in trying to find out about a closed corporation, where you have never had any market. How do you market that one? You sit down and say: What would a comparable company sell for?

THE COURT: It looked pretty clear that both sides were paying ~~miserably~~ considerably over market and intrinsic.

THE WITNESS: They were paying in excess of market value clearly, at least by my definition, and they were even paying in excess of intrinsic value, my definition of intrinsic value; but my definition of intrinsic value is a fairly conservative one and they undoubtedly felt as rational individuals that if they could take charge and they could make some strategic change in the management of Piper and the way Piper ran its business, and a number of things, that they could greatly enhance the earning power.

THE COURT: Did you attempt to identify any of those items and evaluate them and put dollar figures on them?

THE WITNESS: I did not try to do that. I said that I would take, as a for instance, the projection that was given to me from Mr. Fitzgerald. I said there is what some people thought might be developed in the way of potential earning power.

I was thinking, basically, on the market value side. I have got some pretty objective tests from the marketplace.

On the intrinsic value side I don't have that check. For that reason I was rather conservative in my calculations of intrinsic value.

THE COURT: The reason I ask you these questions is I was struck by the structure of your sentence that starts at the bottom of Page 1 and goes to the top of Page 2: Presumably both companies bought their stock and sought to acquire control because they perceived Piper either as a free standing enterprise --

That's one concept?

THE WITNESS: Right.

THE COURT: With reference to that concept you valued the stock at $36 a share market value and $40.80 intrinsic value, and then you go on:

The successful contestant company either had

or would eventually have values in excess of the total anticipated purchase price.

It is because of that that I am curious to know whether you identified what those values are, whether you catalogued them, analyzed them, and put down an evaluation in monetary terms.

THE WITNESS: I did not, basically, because it seemed to me there was no way I could read the minds of those decision makers, figure out what their expectations were.

THE COURT: That was not information given to you?

THE WITNESS: No.

THE COURT: It was not information you sought?

THE WITNESS: No. It was not. That's correct.

THE COURT: I didn't mean to interrupt you, but I wanted to get the full flavor of it because you used the two sets of concepts in the one sentence but in the disjunctive.

THE WITNESS: Yes, sir. Definitely in the disjunctive.

BY MR. LIMAN:

Q I think, Dr. Murray, you had just concluded expressing how you reached what you called your intrinsic free standing value, and were proceeding to testify as to

how you valued on intrinsic value Chris-Craft's minority position after Bangor had gained over 50%.

A The projection of potential earnings, which was used by Mr. Fitzgerald and which I used for this purpose, had built into it an expectation that lots of things were going to happen of a favorable nature in Piper and that the holder of an investment in Piper would be able to share in all of those benefits. An ordinary shareholder with 100 shares of stock or thereabouts and with ownership of Piper widely distributed, could be expected to earn whatever returns would come from that free standing intrinsic value.

Chris-Craft's position, however, was quite different. It was no longer possible to have the same level of confidence in the realization of those projections given the fact that Piper's entire future as an organization was no longer clear. It was no longer the old Piper managed by the Piper family and others, nor was it Piper Aircraft acquired by, integrated into, a well-managed enterprise from a different field.

The uncertainty associated with realizing the projections which Mr. Fitzgerald used and which I used was very, very substantially increased as a result of the standoff in the question of procedure towards an orderly

merger and acquisition.

The other characteristic of an intrinsic value under any circumstances is, of course, that one is not ~~whopped~~ locked into, one is not frozen into, this particular form of an asset, and what had happened in this situation to Chris-Craft's block was that instead of it being a marketable common stock comparable in other respects to the general run of equity investment, it had become a frozen position lacking in liquidity and marketability.

The way to take account of this, it seemed to me most logically, was to increase the rate of discount in calculating the present value of that expected anticipated intrinsic value reflecting the future earning power and growth, because all of these factors were reflecting upon the ~~competence~~ confidence with which someone could anticipate those returns would in fact be realized.

So what I did was to increase the rate of discount in present value. You get the present value of the projected 1973 earning power by increasing this discount rate from 15% per annum calculated quarterly to 25% per annum calculated quarterly.

Q What conclusion did you reach?

A They led me to the conclusion then that on an intrinsic value basis the minority locked in position of Chris-Craft had an intrinsic value equivalent to $27.44 per

share.

Q I may have misunderstood you a moment ago when you were talking about conglomerate value. Does your conclusion as to the market value on a conglomerate basis or the intrinsic value on a conglomerate basis of Chris-Craft's holdings presuppose that Chris-Craft won the control contest?

A No. My conglomerate values simply presume that someone will win the contest and proceed with the merger acquisition process. I think perhaps when I was speaking to his Honor and he gave me the 49 - 49, I should have added the presumption that there was no longer a control argument, there was no longer the possibility of someone winning. It was, in fact, a stalemate.

Q Is it fair to state that in the context of your market value testimony that conglomerate value reflected what the market perceived somebody would pay to take over the company?

A Yes.

MR. LIMAN: I have no further questions.

I want to mark and offer Dr. Murray's report.

[Plaintiff's Exhibit 156 marked for Identification.]

MR. RYAN: Your Honor, as to Dr. Murray's report,

we would like to reserve our objections until after cross-examination.

THE COURT: Whether the report goes in or whether the oral testimony remains in really is a function of applying the relevant rule; isn't that so?

MR. RYAN: That's correct, your Honor.

THE COURT: The technicality, whether you call it Id. or Ev., meaning identification or evidence, really will not be decisive of anything in the case. Isn't that so.

MR. RYAN: We feel we have to maintain a consistent position, your Honor.

THE COURT: Your position consistently is that you are disputing the conceptual basis of the testimony.

MR. RYAN: Correct, your Honor.

THE COURT: What paper is called evidence or identification, the concept, as it is coming out on the witness stand, is not different from the concepts in the piece of paper except that the piece of paper is a convenient way of reading it at your leisure.

MR. RYAN: Yes, your Honor.

MR. LIMAN: Has your Honor ruled? I don't think the Bear Sterns' report was marked in Evidence either. Can we have both of those marked?

THE COURT: By allowing them in evidence I do not accept them as competent proof on the issue. The competent proof will be determined from the application of the legal rule, but they are received as evidence of what the witness has said on paper in addition to what he has said orally.

MR. LIMAN: Thank you, your Honor.

THE COURT: Before you begin cross-examination, I would like to ask one more question and then I will have concluded things running through my mind.

In reaching your conclusions both in your report and on the witness stand you have predicated your comparisons on the notion that Bangor Punta in fact has merger power after September 5; is that right?

THE WITNESS: Yes, sir. After September 5 and owning ~~on~~ more than 50%, yes.

THE COURT: If that factual assumption were revised so that all that existed was the stalemate, I take it you would have to rethink some of the conclusions of value; is that right?

THE WITNESS: Possibly on intrinsic value.

On market value I would say that market value reflecting as it does the expectations of investors is that the ownership of 50.1% was all an investor would care to

inquire about; in other words, he would not be interested in the technical question of what the bylaws said or what was possible when. He would say to himself, "That's enough for me."

t4 pm

THE COURT: That pragmatic judgment is not what I was asking you about.

I was asking you whether, and addressing myself now to market value, the investment -- no, intrinsic value on the market value -- you did tell me that if there was virtually a closed corporation situation, that then what you were doing was really constructing a market value without relation to reality but based upon drawing illusions from other circumstances.

THE WITNESS: Yes, sir.

THE COURT: All right. I think I understand that.

Go ahead.

CROSS EXAMINATION BY MR. RYAN:

Q Dr. Murray, as I understand it, your appraisals or your estimated market value of $57 and your intrinsic value of $68 as of August 7th or as of September 5th for Chris-Craft's block prior to Bangor Punta's acquiring 50 per cent is really a factor of what you call your conglomerate factor; is that correct?

A That is correct.

Q And thatyour report states on page 3 that this conglomerate factor or expectation is evident since at least ~~1957~~ 1967 that Piper would become part of a larger enterprise; is that correct?

A That is correct.

Q Could you tell us, please, what were the facts which led you to conclude that this conglomerate factor came into existence some time in the middle of 1967 and continued to Augustand September of 1969?

A This is based primarily on my own direct experience as an investor and as a decision maker during this period. I did ~~wauntify~~ quantify my own experience to some extent by the use of the Standard & Poors conglomerate index to give a rough indicator of what was happening.

But that tends to be something of an understatement of the direction and strength and power of this move.

One need only look at the history of Litton Industries during this particular period to get it in chapter and verse as to what was happening to candidates for acquisition in a very wide range of fields.

And if you didn't like the Litton story, you could always look at Gulf and Western and Walter Kidde, and somewhat later, of course, City Investing, and a whole array of conglomerates.

THE COURT: The history of those that you mentioned was boom and bust, wan't it?

THE WITNESS: Not all bust. Certainly the very

high ~~failures~~ values placed in the marketplace in 1967 and '68 was very substantially reduced. But as ongoing enterprises, several of them have really been quite successful.

THE COURT: But not on the basis of conglomerate valuation anywheres approaching the Standard & Poors index, isn't that so?

THE WITNESS: That is correct. In fact, if memory serves me, that conglomerate index has completed the round trip and is back to 10 again by now.

But, of course, we have wrung a tremendous amount of price out of the securities markets in the last three years. The average stock really, an unweighted average of all stocks really, has not recovered from the bottom of the market in 1970.

THE COURT: You had a parallel in the history of the utility holding companies, too, didn't you?

THE WITNESS: Indeed.

THE COURT: That made the round trip up and down?

THE WITNESS: That was even more dramatic for the ~~size~~ times, yes, sir.

Q Dr. Murray, I was referring to your conglomerate targets, not Litton and Gulf and Western which are conglomerates. I was trying to address your attention to what are the factors by which you would then identify a company as being

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a conglomerate target and in particular Piper.

A Yes, sir.

Q What were those factors?

A It was in the size bracket that made it feasible for a number of acquiring companies. It was in a glamor industry. General aviation was widely known as a high growth industry. It had that magic label of leisure time. Private flying was a leisure time activity and all "leisure time" kinds of enterprises were extraordinarily popular at that time.

THE COURT: And it had a reasonably low price multiple considering the high flyers around, isn't that right?

A Of course, it had come from a rather low price earnings ratio, yes, sir.

THE COURT: I am sorry, Mr. Ryan.

MR. RYAN: That's all right, your Honor.

Q As your Honor pointed out, did the price-~~ratio~~ earnings ratio have anything to do with your conclusion that this was a conglomerate target?

A The operation in the marketplace, in writing up the price earnings ratio after mid '67, was a piece of objective evidence. Yes, indeed. It seems to me that the spread between the Piper and the Cessna price

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earnings ratio, given very little difference in terms of performance and earnings and the like, was simply an expression of the fact that Piper was regarded as available for acquisition and Cessna was not.

Q We will get into that later. I just want to direct your attention first to this price earnings ratio. And you picked the middle of 1967.

Do you recall approximately what he price earnings ratio was at that time?

A By mid '67 my recollection was that it wasup around 17, 18 times.

Q Well, would it be around 20 to 22 times earnings?

A It might well have been. I don't have those figures directly in front of me.

Q Well, during 1968 and 1969 it was selling in the range of 20 or 22 times earnings, wasn't it?

A Yes.

Q And do you think that that price, which you attribute to ~~be~~ the conglomerate factor, had any connection between the fact that during this period of time, '67, '68 and early '69, that the earnings in Piper were low by comparison with previous years?

A I would not have said particularly low, they were only low compared to that very big boom year in 1966,

when the whole industry had a magnificent boom year which was quite promptly corrected in '67. If memory serves me, that is the only time that Piper's earnings were higher than they were in 1969.

Q Well, do you recall, Dr. Murray, thatin 1961 Piper earned approximately 43 cents a share; did you know that?

A I didn't have that in mind.

Q You didn't look back that far. Did you ever look at what the price earnings was for Piper in 1961, the range?

A That was the year when it was astronomical, like '65 or '70?

Q Earnings ranged between 25 and 63 times earnings.

A Yes, the normal phenomenom of a high ratio and ~~have~~ temporarily depressed earnings.

Q And 1962 the earnings were $1.32 a share and the price earnings ratio ranged from 15 to 43 times earnings?

A Again, the familiar, usual phenomenom, yes.

Q Was Piper a conglomerate target then?

A No, it just had depressed earnings.

Q The conglomerates were around then, ~~the~~ Litton Industries ~~were~~ was around, ~~the~~ Gulf and Western ~~were~~ was around, they were looking for companies with synergistic

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effects at that time, weren't they?

A Yes.

Q But Piper wasn't one of the targets at that point?

A No, sir, there was not the same leisure time focus at that time and there weren't as many conglomerates, either, to compete.

Q You said there weren't very many conglomerates at that time?

A There were not as many conglomerates in '61.

Q As when?

A As in '67, '68.

Q Do you know what the price earnings ratio was in 1965 at Piper, the range? It was 11 to 15 times earnings. Do you know what the earnings were that year? It was $3.56 a share.

Was Piper a conglomerate target at that point?

A It was selling at a relatively low multiple of high earnings. A perfectly normal phenomenom.

Q Isn't a low price earnings multiple one of the criteria for taking over a company?

A Only if the price earnings ratio is low in relation to normal or average earnings. If the price earnings ratio is low because the earnings are temporarily high, it doesn't mean that it is a cheap stock and therefore

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an acquisition target.

Q So actually it is the price of the stock which controls and has nothing to do with any kind of a price earnings ratio or conglomerate factor?

A It is the price of the stock in relation to normal earning power.

Q To what it can earn; isn't that correct?

A To what it can earn across time, not in any particular instant.

Q In 1966 Piper made $4.23 a share and sold at 9 to 16 times earnings.

A No surprise.

Q Was it a conglomerate target in 1966?

A No, it was not a conglomerate target in 1966.

Q But all of a sudden in 1967 it became a conglomerate target and developed this factor which you have cranked into your opinion?

A It became a target and the conglomerates were doing so well, getting such good acceptance in the marketplace, that they could effectuate their efforts on acquisitions.

Q So it is your testimony that the favorable price-~~and~~ earnings ratio and favorable price of Piper stock was solely attributable to this conglomerate target aspect?

A My testimony is that the increase in the price earnings ratio was ~~largerly~~ largely or substantially attributable to its attractiveness as a target for acquisition and, to~~o~~ an environment in which conglomerates had widespread acpetance and tremendous power to effect acquisitions.

Q Now, would you agree with the proposition as follows: "The price of Piper shares relative to the market was at a higher level during such period, 1966 to 1968, reflecting a generally more favorable market atmosphere and a more generous valuation accorded to secondary issues"?

A Yes. That was part of the same phenomenom.

Q It was the bull market, wasn't it?

A There was -- it was the bull market. It was also a market favorable to secondary issues.

Q Well, Bear, Stearns, whose representative testified this morning, that was his justification for the price of Piper's shares during this period of time in which you attribute the conglomerate factor as causing the price increase?

MR. LIMAN: Objection to the form. But he may answer.

THE COURT: Do you understand the question, Doctor?

THE WITNESS: I understand the question. I just think that the gentleman who testified this morning did not offer an adequate and complete explanation of the change in relative price.

Q On page 4 -- are you through, Doctor? Did I cut you off?

A No.

Q Excuse me.

On page 4 of your report, Doctor, you have set forth there the comparison between a conglomerate index of Standard & Poors and the 425 stock index. What is the purpose of that chart? What is that to show?

A That is to show, to illustrate, the point I was making a moment ago, that major conglomerates, for example, the 9 that are included in this index, have very widespread acceptance in the investing community. They could offer their shares at very generous prices, which meant that they had tremendous purchasing power for acquisitions; that is to say, the paper that they were offering to shareholders in target companies could be resold at good and rising prices. It meant that they had almost, it seemed at the time, almost unlimited power to acquire companies of their choice and selection as additions to their conglomerate structures.

Q Do you know the names of the companies that are included on the conglomerate index?

A I looked it up at the time. I think I know most of them. Bangor Punta and Gulf and Western, City Investing -- I am trying to think whether Walter Kidde was one of them or not. It is just a list that I expected to find when I checked it.

Q Would you call General Electric Company a conglomerate?

A Not in this sense, no.

Q It is in a different sense. General Motors?

A General Motors is not a conglomerate.

Q So you were addressing yourself solely to the companies that were acquiring other companies for what they call the synergistic effect of acquisitions?

A The synergistic effect, that is correct.

Q I note in your chart that there was 25 per cent reduction in the index for the conglomate companies during the first nine months of 1969. Did that 25 per cent reduction in the index for conglomerates have any effect upon the value of conglomerate targets?

A It tended to sober people's expectations obviously of what they could get for a target company.

Q In other words, you are saying that people

would have been, should have been, paying less for Piper stock in the 9 months of 1969 than they were paying in 1968?

A Not in the case of Piper, no.

Q Why is Piper different?

A Because Piper was clearly -- you didn't have to guess whether Piper was an acquisition target. Two companies were fighting to acquire Piper.

Q I am addressing myself, Dr. Murray, to your estimated market value, not the actual market that occurred in the marketplace. Your estimated market value. You applied a multiple which was consistent with the same multiple, price earnings multiple, as it has existed for the 12 weeks previous to December 31, 1968, as your multiple?

A Absolutely.

THE COURT: 12 weeks or 12 months?

MR. RYAN: 12 weeks, excuse me.

A Of course. It didn't matter what else was happening in the conglomerate acquisition world. Everybody knew, you didn't have to guess whether Pipe was a target. Everybody knew. All you had to do was read the paper and you knew that these two companies were battling away to acquire it. And this was contingent on it being ac-

quired.

Q No, Doctor, I am referring to your opinion as to the estimated market value --

A So am I.

Q -- of $57 which you recreated in a situation where there wasn't a control fight. Your estimated market value of $57, doesn't that presume that there is no control fight and that that was a market value that Piper would have had without the control fight?

A No. That -- that is the presumption as clearly stated in the formulation of the question. The question is that the fight for control is still going on, it is still open, it is still moving toward resolution and I am sure the testimony will support that statement precisely.

Q You said that one of the convincing factors on which you based your opinion that Piper was a conglomerate target was the fact that as ~~Beach~~ Beech was still controlled by the ~~Beaches~~ Beeches, and Cessna was still controlled by, I believe it was, the Marshalls --

A Wallaces.

Q -- Wallaces, and that Piper, Mr. Piper, had left the scene. Do you know who was managing Piper Aircraft Corporation?

A It is my recollection that it was his sons. Is that right? And I guess two sons.

Q William Piper, Jr., and the brother, Thomas Piper.

Do you know how much stock the Piper family owned?

A It was widely thought that the Piper family owned 20 per cent. I guess it turned out that they owned more than 20 per cent.

Q They owned 31 per cent, ~~was~~ the shares that were sold to Bangor Punta. So could you tell me how you distinguish the ~~Beach~~ Beech situation, which was a publicly held company in which the ~~Beaches~~ Beeches had a control stock, Cessna, where the Wallaces had it, and Piper; aren't they the same?

A Once you split the ownership, you open up the possibility that the group of people will not stay together. One didn't -- I don't know what the relationships were in the Piper family and other investors didn't, either. They took the general proposition, which is a pretty good one across time, that, don't worry, there's always a point at which almost any family, whether their name is Piper or Jones or Murray, will split.

Q Are you familiar with the transcript of the case, of this case, the Chris-Craft case, as to the efforts made

by the Piper family to prevent their company from being taken over?

A No, sir.

Q Did you ever make any study of that, ask any questions?

A No, sir.

Q You just assumed that the shares were owned by various groups who would be sold out at one point of time as distinguished from Mr. and Mrs. Beech Beach; that is your assumption?

A That's my assumption and it was the assumption held by other investors, which is so crucially important in the determination of market value.

It is not really what I think, it is what investors perceive that will determine what they are willing to pay for the shares. And this was their clear perception.

THE COURT: What tangible evidence is there for any investor, assuming that the Pipers wanted to get out?

THE WITNESS: I don't think anybody has to assume that they wanted to get out.

THE COURT: That is what Mr. Ryan is asking you.

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THE WITNESS: No, I did not say that there was any presumption that they wanted to get out. The question was could you deal with them? And the presumption was it would be easier to deal with the Pipers than with Ollie ~~Beach~~ Beech or with Duane Wallace.

THE COURT: What tangible evidence is there of any such assmption?

THE WITNESS: In the way people reacted.

THE COURT: What people, what reactions?

THE WITNESS: Well, there were people like Bangor Punta and Chris-Craft, for example, who didn't spend any time seeing whether they could acquire Cessna. They apparently went to work on ~~paper~~ Piper and investors were feeling the same way.

THE COURT: It is obvious we are talking at opposite points. That the circumstances of Bangor Punta coming into the situation have been related in this record, but apparently that is not part of what you considered your function to avail yourself of.

THE WITNESS: No, sir, I was looking back -- I am trying again to respond to the question you asked me earlier, remember what did I mean by available? I am merely talking about investors perception and they know --

THE COURT: My recollection of the trial testimony

was that the Pipers ~~soft~~ sought to repel Chris-Craft with every circumstance at their control; they had a couple of abortive attempts and finally got a hold of Bangor Punta to help them.

Does that change the context of your answers?

THE WITNESS: No, sir. What I was speaking to --

THE COURT: Go ahead.

THE WITNESS: -- were the expectations held by investors in 1967 and 1968 before Chris-Craft had made the slightest gesture about actually acquiring Piper.

THE COURT: I think we are bogging down on a small point that really is off the main track. So why don't you go back.

THE WITNESS: Certainly.

Q Dr. Murray, perhaps in your management class that you teach at Columbia, did you ever discuss or consider what were the elements that these conglomerates looked for in order to get the synergistic effect in their company?

A Yes, sir.

Q Was one of the elements a low price earnings multiple?

A Lower than the one that your conglomerate commanded in the marketplace.

Q Exactly. If your conglomerate is selling at

25 times earnings, that it only looks for companies that are selling at 10 or at 15 times earnings; is that correct?

A As long as it is 24 or less. As long as it is less than yours; you are going to get some of that gimmickry in the accounting.

Q Synergism takes effect when the price earnings is lower than when you have a high price earnings multiple; isn't that what they really look for?

A That is what some of them were looking for as a financial promotion, but that is not synergism.

Q Synergism is when you put them both together and hopefully you will apply the higher price earnings multiple to the earnings of the acquired company?

THE COURT: That is not synergism.

THE WITNESS: That is not synergism.

THE COURT: Is it conglomeration?

THE WITNESS: That is conglomeration. That is the promotion -- financial promotional gimmickry.

THE COURT: I am struggling with the antonym ~~answer~~ of synergism. What is it, negative synergism?

THE WITNESS: I guess it would have to be negative synergism.

THE COURT: A pure and etymolcgical quest.

Q One of the other items that the conglomerates look for was cash or undervalued assets?

A Yes, cash rich companies or undervalued assets or exceptional --

Q One at a time. We will go through each of the elements. Was Piper a cash rich company?

A I wouldn't describe it as a cash rich in the sense of being a high priority target.

Q Did it have undervalued assets, to your knowledge?

A I would think not. That old plant was -- had a low book value but it wasn't that good in earning power or location.

Q Well, was borrowing capacity another factor which the conglomerate looked for?

A Yes.

Q Do you know what the borrowing capacity of Piper was?

A It would have been substantial.

Q When you say "substantial," what do you mean?

A They had used little or none of it so that it would be a significant borrowing power, I would think.

Q Couldn't you look at their balance sheet and give yourself some idea of what the borrowing power was?

A I could.

Q Did you?

A No, sir.

Q Is complimenting product lines another element that conglomerates look for?

A In the true conglomerate sense, one need not have that. If you are thinking of the free form conglomerate that says that we can apply our techniques of management to diverse kinds of business, then complimentary product lines are not so important. But this was the question, some would give emphasis to this, and some would not.

Q Would you consider a company in the general aviation business, with their production problems, a rather unique business?

THE COURT: Just read that back to me.

(Read.)

A I suppose in some sense it is unique. It is different from a lot of other --

Q It is almost custom, isn't it?

A It gets preciously close to it except when you are doing the large runs of small planes.

Q And wasn't also that a factor that conglomerates looked for, was non-management ownership of securities, when

they were looking for a target?

A Not necessarily.

Q Well, wasn't that one of their reasons why you scratched ~~Beach~~ Beech and Cessna?

A It was not the ownership, it was the personalities that would scratch those two. In fact, sometimes it was nice to do business with owners because you could make your arrangements and be assured of a large acceptance if the managers had good ownership.

Q So that really what you come down to is that your opinion tnat this conglomerate factor came into being with Piper was because it was in the glamor industry and general aviation had a great future and it was leisure time; that is what you base your opinion on as to the basis for this conglomerate factor which you add to this security?

A ~~This~~ Those would be substantialelements, yes.

Q Are there any others?

A Yes, I think the question of alternatives, the fact that there were not other alternatives readily visible because one had to expect that the ~~Beaches~~ Beeches and Wallaces wouldn't be prepared to do business, so you get, if you like, a kind of a "scarcity value" attributable to Piper ~~or~~ in this environment.

Q And you are assuming that the Piper family were prepared to do business?

A I don't even make an assumption on that at all, no. I make just the general assumption that most people are willing to do business at some price on some terms.

Q Wouldn't that be true of Mr. and Mrs. ~~Beach~~ Beech and Mr. and Mrs. Wallace?

A No. If you know Ollie ~~Beach~~ Beech, you know that that is not the basis on which you make decisions.

Q You also stated on page 6 of your report that Cessna was not a target for a conglomerate. Do you know that Bangor Punta considered acquiring Cessna?

A I don't know whether they did or not.

Q Do you know whether any other companies had considered acquiring Cessna?

A I don't know.

Q Do you know what Cessna's cash position was?

A It was satisfactory. It was -- Cessna was not cash rich but it was certainly satisfactory.

Q They were a strong, conservative company, weren't they?

A Well managed but it did have a sizeable defense military business that some people regarded as less attractive.

Q It also had a substantial portion of its business, approximately 30 per cent, in the electronics business, which you are referring to; is that correct?

A Yes, and then that other business, that they make hydraulics or whatever for farm equipment and the like.

Q And it had a lower price earnings multiple, didn't it, than Piper?

A Yes.

Q Also on page 6 of your report, you conclude that "The market value of Chris-Craft's block and its intrinsic value at the time of August was $57 and $68," and you say that your conclusion is that no premium would have been paid over those prices for Chris-Craft's block; is that correct?

A A premium might have been paid but what I was addressing here was the question of what was the fair market value of Chris-Craft's holding. If Chris-Craft could find that buyer, the buyer undoubtedly would have been willing to pay a premium.

Q Undoubtedly would have been willing to pay a premium?

A Because by definition, the buyer would be after control.

Q And would he have paid a 40 per cent premium?

A He could easily have paid a 40 per cent premium.

Q And that is over your prices of $57 and $68; is that correct?

A I was speaking of 40 per cent over the $57 price. That would be just under $80. Yes, I can conceive of someone paying that.

Q Paying $80 a share for Chris-Craft's block while Chris-Craft had 41 per cent and Bangor Punta either had 31 per cent or 38 per cent; is that your testimony?

A That would be on the assumption that from that leading position it was indeed possible, likely, probable, that one could obtain complete -- could effect a merger.

Q Did you make any studies of the likeliness or probability or anything else which you base your conclusion on? Did you ever study that? Or is this just your guess?

A No. This would be based on my experience in this field, that if one could find a buyer for a complete takeover of the Chris-Craft position in a block, which could easily involve also taking over the Bangor Punta position --

Q Oh, taking both.

A Taking both or Bangor Punta taking over

Chris-Craft's, that this kind of a premium was not out of reason.

THE COURT: You mean to say that you take these values at $80 a share for a hundred per cent of the share, you would be willing to pay that for Piper?

THE WITNESS: Not necessarily $80.

THE COURT: That is what he is asking.

THE WITNESS: In cash.

THE COURT: That is what Mr. Ryan is asking you. You said that if you could find a buyer to take over both positions at $80 a share, is there any reasonable expectation on the part of you, an expert banker and investment man, that anybody would pay $80 a share for 1,600,000 shares of Piper?

THE WITNESS: They would not pay -- they were not paying cash, sir, you realize.

THE COURT: You mean they are giving pieces of paper for it?

THE WITNESS: They were giving pieces of paper.

THE COURT: Let us talk about pieces of paper worth money.

Would they give money for it?

THE WITNESS: In that environment those pieces of paper could be resold at a very high price, as the

conglomerate index indicates.

THE COURT: Would you consider taking the concept fair value, that Piper was worth at any time that we are talking about ~~$1,200,000~~ 128,000,000.

MR. LIMAN: How much did you come up with, your Honor? I think your Honor's arithmetic is wrong.

MR. RYAN: 138 million or so.

THE COURT: Let me do it exact. 13 million. No, 131 million.

THE WITNESS: 131 million.

THE COURT: Was Piper worth 131 million at any time?

THE WITNESS: Not in my judgment as a security analyst.

THE COURT: That wouldn't be fair value as fair value is understood, would it?

THE WITNESS: No, sir.

And I didn't in my value --

THE COURT: Would you think --

THE WITNESS: I didn't give that premium, as you know.

THE COURT: Would you, as a security analyst, attempt to put out an issue of Piper to realize $131 million?

THE WITNESS: No, sir. I wouldn't but this was not

the question at issue here.

THE COURT: I am only listening to the implications and the extrapolations of the testimony.

THE WITNESS: The reason, sir, why I could arrive at 57 as a fair market value that someone would be willing to pay was because he saw the possibility that if he bought it at 57 he could sell it for something more than 57. I don't have to establish, to have that conviction, that he could sell it at 80.

THE COURT: I understand that part of the testimony but I just thought that I heard you tell Mr. Ryan that $80 would be what a purchaser, if you could find one, would pay for both bundles?

THE WITNESS: Might very well. Might very well in that environment. Not in cash but in various forms of paper.

I sold a very large position in Hooker Chemical to ~~Oxidental~~ Occidental Petroleum just around this time, and so help me the premium was on the order of 50 per cent, because at that particular time in his history, Dr. Hammer wanted to get a chemical company into that complex of his, and he gave me paper which I owned for less than 24 hours.

But the price was extraordinarly high for Hooker Chemical in ~~Oxidental~~ Occidental Petroleum's $3.60 preferred.

So this is what was going on at that time, some of which clearly --

THE COURT: I am beginning to see why some stocks went down.

THE WITNESS: Yes, sir.

THE COURT: Including ~~Oxidental.~~ Occidental

THE WITNESS: Including ~~Oxidental~~ Occidental, you bet. That it did. ~~it.~~

Q Getting back to my first question, are you saying that if someone would buy Chris-Craft's block alone at a premium of 40 per cent over your $57, that is 41 per cent block while Bangor has 38 and --

MR. LIMAN: Do you mean 42-37 or 41-31?

MR. RYAN: Yes.

A It is not ~~incondeivable~~ inconceivable, especially if the buyer thougnt he could also make a deal with Bangor Punta.

Q Suppose he couldn't make a deal with Bangor Punta, would he still pay $80 -- is this cash or paper, by the way?

A I would think that he would hesitate to pay $80, even in funny money.

Q You then go on, Dr. Murray, in your report, with the free standing value, and you ascribe a free

standing market value of $36 per share, and this is based upon a price earnings multiple of approximately 12-1/2 times reported earnings?

A That is correct.

Q Is that multiple a fair multiple, do you think?

A That's a multiple comparable to the Cessna multiple, it is a multiple reflecting what you might think of as the historical discount of the Piper multiple from the S&P 425 indistrual stock index.

Q Of course, you had no trouble using a 19.9 multiple for your conglomerate factor, yet you are prepared to testify that 12-1/2 price earnings multiple in August-September 1969 would be a fair multiple?

A Washing out the conglomerate potential.

Q Washing out the conglomerate potential. So then when you come up to the free standing intrinsic value, you in substance accept Mr. Fitzgerald's analysis with the one proviso thatyou discounted on a quarterly basis rather than on an annual basis?

A That is correct.

Q Otherwise, you concur in Mr. Fitzgerald's analysis as to what free standing intrinsic value of Piper's shares were on September 5, 1969?

A The result of using his set of assumptions, it

seemed to me, gave a valid basis for measuring differences in intrinsic value on the conglomerate or the free standing or the minority locked in value. This doesn't mean that I necessarily subscribed as an expert to the precise level of valuation that Mr. Fitzgerald arrived at.

Q Well, you in substance used his level of valuation, except you discounted on a 15 per cent ~~per~~ quarterly basis rather than per annum?

A My assignment, my effort here, is to measure the differential effect of changes in the control position in Piper. It really isn't terribly important whether I am working with market values or Mr. Fitzgerald's structure of valuation, as long as in the several circumstances I am following a consistent pattern.

I could have constructed, for example, instead of a Fitzgerald value, a Murray value. It wouldn't have been materially different. But I could have then had my own level of absolute valuation. It would not have changed the outcome significantly, however, because what is at stake here is differences, and not absolute levels of value.

Q Now we will get to what you consider the differences to be, Doctor. You state on page 7 of your report that "As of September 5, 1969, important decisions

were pending in Piper regarding marketing policies, product line, plant locations, executive leadership," et cetera. Would you please recount to us what you are referring to in that sentence?

A I am referring to the general discussions about -- that came out in the course of the control arguments and the like about whether the Piper management should be changed.

There was also a lot of discussion as to whether the distributorship of Piper were necessarily the best or the most effective method. There was the question of whether you really ought to have your plants located in Lock Haven, Pennsylvania, or in Florida or somewhere else. These are the kinds of questions. Those are simply a few for instances of the kinds of business decisions typical in any ongoing enterprise.

Q Did you ever read the minutes of the boards of directors meetings of Piper which have occurred since August 1969 to date?

A I didn't.

Q Did you ever make any inquiry as of any Bangor Punta personnel concerning these important decisions?

A I didn't.

Q Did you ever make any inquiry of Chris-Craft

personnel concerning these important decisions?

A Probably in talking to Chris-Craft's counsel I -- some of these subjects probably -- were undoubtedly discussed.

Q You don't have any specific recollection, though? For example, you mentioned plant location.

Did you have any discussion with anyone concerning the discussions which took place at the board level concerning the opening and operation at Lakeland?

A Basically, my familiarity with the Pennsylvania plant came out of some testimony I did for the Investment Bankers Association at Harrisburg on a bill to restrict takeover in Pennsylvania, and at that time in Harrisburg there was a lot of discussion about what was happening at Piper and there was a lot of concern at that time among the union representatives present as to Piper's leaving Pennsylvania.

Q Other than that testimony, you made no other inquiry? Lakeland, by the way, is in Florida.

A I was aware of that. I didn't pursue this as a matter of great importance as far as my valuation was concerned.

Q And your next statement, I direct your attention to, is on page 8 of your report when you state that "Retail

distribution of the Piper shares by a selling group of investment bankers was not a promising alternative." Why?

A It seemed to me that there were two problems here: One is the problem of an investment banking firm putting its name on the offering, which raised a lot of questions in my mind.

Q What were those questions?

A The questions of, what was one offering for sale? Was he offering shares in Piper? Was he offering the right to receive a package of Bangor Punta securities in a merger proposal? Was he offering shares in a company in which the question of control and merger wouldn't be resolved for a long period of time because of the existence of litigation between the two large shareholders and furthermore, what was the time frame in which one might anticipate some or any of these events to take place? It seemed to me that going to a potential buyer of the shares, ~~if~~ the shareholder would ask the simple question: My dear friend and investment banker, what are you selling me?

Q Wouldn't he be given a copy of the prospectus and wouldn't the prospectus have to state clearly and distinctly what the program and plans were of Bangor Punta

concerning this security or investment? Wouldn't it be in the prospectus? Isn't that what you, as an investment banker, would ask to see?

A What would be in the prospectus would simply create additional uncertainties. We all know what you do in a prospectus, and that is you cover ever contingency. So what it says in the prospectus is: no one can tell you what will be the terms of a merger, whether there will be a merger, when and is there likely to be one.

That is what would be in the prospectus and I would have a relatively low opinion of an investment banker that would peddle that stock with that kind of a prospectus.

Q Well, you, of course, are familiar, Dr. Murray, with numerous offerings of minority interests in corporations?

A What do you mean --

Q It is not an unusual situation, is it?

A What do you mean by "minority interest"?

Q Well, for example, we will take Brunswick Corporation when it sold off its 15 per cent interest in Sherwood Medical. That, by the way, Bear, Stearns was a member of that syndicate.

A This is where you take a small -- less than

20 per cent of one of your subsidiaries and have it go public?

Q That is correct.

A There's no similarity, no relationship whatever to this kindof a situation. No possible analogy.

Q None at all?

A None at all.

Q In other words, when we had 51 per cent and we sold 42 per cent --

MR. LIMAN: You mean Bangor Punta sold 42 of the 51?

MR. RYAN: I am assuming a hypothetical.

MR. LIMAN: Objection. Let him make clear who is selling the shares.

THE COURT: The interruption is not appropriate. Go ahead and ask the question.

MR. RYAN: I will rephrase it.

Q Dr. Murray, what you are saying is that a responsible underwriter would not offer for sale a 42 per cent interest in Piper Aircraft Corporation while Bangor Punta owned 51 per cent; is that what your testimony is?

A The statement I just made, sir, was that there was no analogy between this offering and your Sherwood Medical.

Q Answer the question I just posed to you. Is it your testimony that no responsible underwriter would underwrite an offering of 41% interest in Piper while Bangor Punta owned 51%?

A My testimony is that I would think less of any investment banker who made that offering, and I am sorry for my friend from Bear Stearns if they would have made it. I do not think that this would be an appropriate activity for a responsible investment banker to engage in, given the uncertainty of the status of the security that he was offering.

Q Why do you say, "uncertainty"? Wouldn't there have to be a statement made in the prospectus in which Bangor Punta would have to disclose what its plans were?

A What the disclosure would be is that Bangor Punta would make no representation whatever to that potential buyer of the shares as to what was going to happen. You and I know that Bangor PUnta officers could not sign a prospectus that made a commitment that they were going to give whatever they were going to give at whatever point in time, in exchange for those shares of Piper, or that they were going to give nothing. The officers of Bangor Punta we know perfectly well could not responsibly give a clear representation that would give the buyer of those

shares confidence that he knew precisely what he was buying.

Q Wouldn't they have to state whether they had any present intention to consummate a merger?

A They would have to say that they had, presumably had, no present intentions. I presume that's what they would have to say.

Q In your opinion, such a statement would not be a satisfactory statement and no responsible underwriter would underwrite a security with such a statement?

A Certainly not. There is no time frame on that, and there is no assurance whatever that they have not a perfect right to change it six months or three years from now.

Q We will now get to your next statement that you have at the bottom of Page 8: Constantly in the background was the possibility of the statutory merger proceeding by Bangor Punta. This would only be initiated obviously in the midst of a cyclical ~~cycle~~ contraction in the general aviation business, such as the one starting in late ~~lage~~ 1969.

Do you see that statement?

A Yes.

Q Isn't that the least likely time for Bangor Punta to propose a merger between it and Piper?

A No. I would think it was a likely time.

Q What do you think the effect on Bangor Punta securities would have been if Piper was at the bottom of a cycle?

A When do you think the acquisition is a desirable one? That's the question?

[Record read.]

A [continuing] It depends entirely upon what the terms of the merger offer were.

Q Don't you think, Dr. Murray, that if Piper, which was a significant investment ~~of~~ for Bangor Punta, was at the bottom of the cycle, its earnings were not flowing up to the parent, perhaps it may have an affect upon the price of Bangor Punta securities?

A Yes, but --

Q The next question is this: That would mean, would it not, doctor, that if you were going to propose a merger, you would have to give out more paper?

A You don't have to give paper. You have a whole range of choices.

Q You can give cash?

A If Piper were depressed enough you might advantageously give cash.

Q Where do you think Bangor Punta would get the cash from if Piper was at the bottom of the cycle?

You are talking now about a 49% interest, doctor.

Have you ever studied Bangor Punta's financial statements?

A Yes. I have in times past.

Q I am talking about now. I am talking about 1969.

Did you look at their financial statements at that time?

A I may have because I participated in making some loans to Bangor Punta, so I guess I did look at them at the time.

Q But you didn't refresh your memory when you made your statement here that obviously Bangor would have picked the bottom of the cycle in order to effect the merger?

A I didn't need to.

Q There is one other sentence you have here on Page 8. You say the market environment had earlier begun to turn, to cool towards this kind of company.

What company are you referring to?

A On Page 8 --

Q In the second paragraph.

A I have it.

Piper. A secondary company like Piper.

Q A secondary company now? Not a conglomerate target, but a secondary company?

A That's correct, because it is no longer a conglomerate target. We are selling Chris-Craft's minority position at retail.

Q So that what you are saying then really is that this synergistic effect, as you put it, or your conglomerate factor, whatever you want to call it, suddenly disappears at the point where Bangor Punta acquires the 51%? There is no longer a synergistic affect to Bangor and there is therefore no conglomerate --

A The action of acquiring 51% indicated that the prospects for integration into a conglomerate had been substantially eliminated.

Q How could you say that? Wouldn't Bangor Punta want to go out and get the rest of the shares?

A Had Bangor PUnta wanted to get the additional shares at that time they never would have spent those dollars to bring their holding up to 51%.

Q Going back to your report on Page 9, you state that going into such determination in late 1969 that might salvage between $25 or $26 per share in an appraisal proceeding.

Could you describe for us the methodology you

used to arrive at that $25 and $26 a share?

By the way, other than the Universal Pictures appraisal you referred to, were you in any other appraisal proceedings involving dissenting shareholders?

A No.

Q Who were you consultant to in that case?

A The firm of Simpson, Thacher & Bartlett, Mr. Vance.

Q Whom were they representing?

A They were representing Universal Pictures.

Q Please tell me the methodology you used for arriving at $25, $26.

A I tested a variety of methods that had been used in Delaware and in other jurisdictions to get some kind of, some sort of, levels of potential. For example, I took the Universal Pictures case which gave 80% to earnings and 20% to asset value, and ~~it~~ applied, as a price earnings ratio, one taken from the industry.

I took five years of Piper's earnings and I used Cessna's multiple of 12, and this gave me for 80% of my weight a value of about $36 a share, I took asset value at 23. That gave me another increment. This worked out, it looked like $33.69. I knocked off 19¢ for expenses and that gave me $33.50.

I said to myself, "I wonder how long it would take" -- and Universal Pictures took seven years. I felt that I would cut it back to four years. If I could get it in four years, if I could recover that $33.50 with a ~~90%~~ 9% discount rate, it would be worth 23-1/2. At a 15% discount it would bring me $18.59. At a 6% discount, which is certainly much too low, but with the expectation that I could recover in four years, I would get on the order of $26.40.

What I did, I did not make a formal legal Pennsylvania law appraisal, but what I did was what a thoughtful, careful person thinking of buying Chris-Craft's position would do.

Given the uncertainty of what th determination would actually turn out to be and the time elapsed in reaching that and the uncertainty associated with it, I felt that an ~~investigator~~ investor looking at this in terms of what he was willing to pay to step into Chris-Craft's place, would surely not give more than the $25 or $26 as what he might sort of expect as some kind of ball park estimate of an appraisal realization.

Q So what you are really saying is that that is not a formal appraisal, legal appraisal, you went through, but your prediction as to what you think an average investor

would think if he made your exercise, performed your exercise.

A Well, I am not just thinking of what somebody else would do. I am saying, what would I do as an experienced investor trying to make a decision on this point. I said I would reason in that manner.

Q By the way, Dr. Murray, have you ever made any study of what controlling shareholders paid to minority shareholders when they were liquidating the minority interest?

A I have looked at those figures across the years.

Q Did you ever make a study?

A Writing up a report on it?

Q Just for your own information.

A No. I have not done -- I have not written a report on the subject.

Q Would you suspect that perhaps premiums were paid to minorities by controlling shareholders for their blocks?

A When there was a very small minority outstanding such premiums have, indeed, been paid just to get rid of the nuisance value of a 3% or 5% holding.

Q Also in your direct examination you testified that what you thought Bangor would do would be to wait

for a five-year slowdown in Piper Aircraft earnings and at that point it would jump in and demand an appraisal; is that correct?

A That's not correct. I didn't say a five-year slowdown. What I said was that if you waited two years and dropped off the first two years of those five and you substituted ~~to~~ two low level earning years, then my five-year average of $3 a share would easily, quickly, look like $2 a share because pretty soon I am dropping out '65 and '66, which were very good earning years, and if I substituted a couple of low earning years, such as '70 and '71 might turn out to be, it would look more like $2 a share.

Q And this procedure would get by an appraiser under Pennsylvania law? He would just pass over this and allow Bangor Punta to take the bottom of this five-year cycle? Is that what your testimony is?

A The record is clear that the Courts have taken mechanically the preceding five-year kind of thing, and it is fruitless to argue with them that they should make an exception of the most recent year or any bad year.

MR. RYAN: I have no further questions.

MR. ARNING: I would like to put one or two questions to the doctor, if I may.

CROSS-EXAMINATION

BY MR. ARNING:

Q I would like to clarify one answer you gave to the Court this afternoon. I believe I took it down substantially correct and that was that your conglomerate value, both on a market value basis and on an intrinsic value basis presumes that someone will win the contest and proceed with a merger. Do you recall that answer?

A Yes. I think that is correct.

Q I am somewhat puzzled as to what happens in order to enable you to reach your lower figures because that's precisely what happened, someone did win the contest. Why is it that that value disappears?

A When I talk about someone winning the contest, I am talking about someone going through the entire process, including completion of the merger and integration of the enterprise into its own structure. I am counting on those economies and efficiencies and the addition of new resources to enhance the earning power, increase the ~~insurance~~ assurance that the earning power, potential, will be realized.

So when I speak of someone winning the contest, I am not t[illegible]ng about someone finishing ahead; I am talking about one completing the complete merger and

integration of enterprise into its structure.

Q So all that is needed to restore that value is to allow a merger to proceed; is that correct?

A The procedure going right on through to combination, realization of those gains. That would have, indeed, produced the kind of value that is reflected in those conglomerate values.

MR. ARNING: No further questions.

REDIRECT EXAMINATION

***[BY MR. LIMAN:

Q Why was it it lost its conglomerate value in September of 1969, in your opinion?

A It lost the conglomerate value at that point when it was clear that Bangor Punta, instead of moving towards a merger, had gone out and purchased the additional shares in order to obtain majority control. When it had declined to re-open or to continue to open the merger or exchange offer, when it declined to make a proposal to Chris-Craft, when, indeed, the company publicly announced that they now had the 50.7% and they were not about to pursue a merger at this time --

5/3 Q When you say "publicly announced," are you referring to the Wall Street Journal --

A I am.

Q When you said that they pursued the route of making cash purchases, what are you referring to there?

A I am referring to the open market purchases as it was reported in the press of 101,564 shares.

Q After the exchange offer closed?

A After the close and just prior to the announcement of the 50.7% control position they described.

Q Is it your opinion, as an expert, that that conduct by Bangor Punta in buying those shares for cash signified that they did not intend immediately to make an offer to the remaining shareholders?

A Clearly.

Q You testified in answer to Mr. Ryan's questions that you would have predicted that they would have made the offer at the time most advantageous to them, to Bangor Punta, an ultimate offer, am I correct?

A Yes.

Q You said that a time that was close to the bottom of the stock would, in your opinion, be the most likely time, am I correct?

A That's correct.

Q Mr. Ryan asked you, wouldn't that be a point at which Bangor's value had deteriorated in the sense of its paper? Am I correct? Do you remember those questions?

A Yes.

Q Are mergers sometimes offered with debentures?

A Yes.

Q Warrants?

A Warrants.

Q Are you aware that Bangor is trading on the Philadelphia Exchange today at about $10 a share?

MR. RYAN: Piper.

MR. LIMAN: You wish it were Bangor.

Q That Piper is trading on the Philadelphia Exchange at approximately $10 a share?

A Yes.

Q Would you consider if an offer could be made to pick up that company for $12 a share premium of 20% that would be a pretty good acquisition?

A Indeed it would.

Q You said that the Sherwood Medical example that Mr. Ryan gave you, was not in the least bit analoguous. Do you recall that testimony?

A I do.

Q Tell the Court why.

A The sale of a mincrity interest in a subsidiary of a parent is the kind of transaction that has been engaged in in recent years to help enhance the value of the parent.

The idea is that if someone could only see how highly valued our subsidiaries, they would value us as the parent more liberally, so this is not a contested situation. It is under the friendliest of circumstances. It is designed to be as helpful to the parent as possible. Hopefully floating this issue will create a favorable investor reaction to the parent. The parent does not lose any of the benefits of consolidating tax returns, having retained 80% or more, and, indeed, the parent, if anything, has a strong incentive to make that subsidiary perform exceedingly well. It, after all, has 80% of it and it is trying to make the shareholders of that small minority position have the most cheerful and optimistic and appreciative feeling of what the enterprise is doing so there is no adversary situation. In fact, this is why I said it had no similarity or analogy to this situation here.

Q In that situation the issuer was the one who was getting the money; am I correct?

A Yes.

Q The parent is receiving the money?

A Yes. Indeed.

Q Its interest is to have as high a price for the stock as possible?

A Absolutely.

Q Contrasted with a situation in which Chris-Craft is selling its stock and Bangor Punta remains with its 51%. What is the difference?

A Obviously Bangor Punta doesn't get a nickel of the proceeds of that sale of shares, and for that reason it has no incentive that the return be maximized to the seller.

Q Does it have some incentive that the price be low?

A Indeed. It has a strong incentive that the price be low because the price paid by shareholders is going to linger in the minds of those shareholders at a time when Bangor Punta would presumably make a merger proposal somewhat later.

THE COURT: With respect to the value of the 51% of the stock on its balance sheet, is it in its interest to keep it as low as possible?

THE WITNESS: As long as it is reporting earnings on a proportionate basis the critical thing is, what are the earnings rather than what is the market value.

THE COURT: Is it an incentive ~~of~~ for a corporation to downgrade its assets?

THE WITNESS: It is obviously not as much an incentive. All I mean is that that was not terribly

important. It is a matter of some indifference. As long as the earnings are coming through, that's important. The market price --

THE COURT: If they came to you for a loan at Bankers Trust Company and the stock of Piper was valued at 80 on one occasion and was valued at 27 on another occasion, would you make the same loan to Bangor Punta?

THE WITNESS: Probably not.

THE COURT: Why not?

THE WITNESS: Because you might be looking to that particular asset for collateral. If someone were borrowing without the use of collateral and borrowing solely on the basis of earning power, then it would be less important, less significant; but what I would be appraising basically is the earning power of the investment in Piper as illustrative of Bangor Punta's capacity to repay my loan.

THE COURT: Bangor Punta was a conglomerate looking around for other opportunities, other available companies. Was its interest in downgrading its portfolio or upgrading?

THE WITNESS: In the short run it might be quite indifferent with a view to upgrading the ultimate value by acquiring the now available minority interest in

Piper having been retailed and now scattered into many hands.

THE COURT: It sounds to me like the parent is taking a jaundice view of his child. I never heard that.

THE WITNESS: I didn't mean necessarily to imply a jaundice view. I meant an indifference unlike the Sherwood Medical case where the parent wants to do everything possible to enhance the value.

BY MR. LIMAN:

Q Dr. Murray, when Schenley shareholders, the remaining shareholders, were merged out by the Glen Alden Enterprise. Was it to Glen Alden's interest that the price of that Schenley stock was selling, before the merger, high or low?

A In that case it was clearly that it be low.

Q If you assume that Bangor Punta's ultimate interest was to acquire the remaining shares of Piper by merger, what would its interest be?

A Its interest would be up, other things equal, to have those shares low.

Q You were asked by Mr. Ryan about the disclosure that would be in a prospectus on an offering of Chris-Craft stock. I will show you Plaintiff's Exhibit 25, which was

the Bangor Punta prospectus on its exchange offer, Page 5, and I direct your attention to the language there which reads as follows:

Bangor Punta seeks to acquire control of Piper. Bangor Punta has contracted for a total of 621,290 shares of Piper, approximately 38% of the total outstanding. If it succeeded in acquiring at least a majority of the outstanding common stock of Piper, it would acquire the power to cause Piper to merge, consolidate, sell its assets, or liquidate without concurrence of the remaining Piper stockholders; however, in certain instances any minority shareholder who dissented from such action would have appraisal rights under Pennsylvania law. It is presently contemplated that if Bangor Punta acquires a majority of the common stock of Piper, Piper will be operated as a separate unit of Bangor Punta, and the present officers of Piper will occupy the same offices in such unit. However, Bangor Punta does not presently have sufficient information available to it to make any final decision as to these matters. Any such final decision by Bangor Punta depends upon, among other things, operational, tax, financial and other corporate considerations.

Have you read that?

As an investor would that kind of disclosure of

the intention and plans have given you much comfort?

A It would give me no comfort whatever. It would have given me serious concern.

Q Dr. Murray, you were asked about Bangor Punta's interest in terms of Bangor Punta's own financial standing, borrowing power, and so forth. On the assumption that Bangor Punta ultimately wanted to acquire by merger the remaining shares, would it be in its interest from a financial accounting point of view to acquire those shares at a low price, the lowest possible price?

A Yes. At the lowest possible price.

Q Why is that?

A If it is going to be recorded as presumably it would in this case on a purchase basis, ~~this would eliminate, presumably, a purchase basis~~ at or below or close to book value; it would eliminate the creation of an intangible asset, a good will asset; that would have to be amortized over not less than 40 years from income and, of course, this is a particularly painful amortization because it is not tax deductible and comes right off the bottom line in terms of ~~reporting~~ reported earnings.

Q So in terms of Bangor Punta's interest in its financial statement, if it was required to acquire by merger the Piper shares at a price above Piper's net asset

value, it would have to write off the excess earnings over a period of time.

A Yes.

Q As a securities analyst, a man who has managed portfolios, a person who has held positions with Bankers Trust, is it your opininion that Bangor Punta's long range interest was to acquire this at a low price?

A It is, indeed, my opinion.

THE COURT: You are not presuming the Court would impose an unfair price just to satisfy Bangor Punta's desire in that connection, would you?

THE WITNESS: The Court?

THE COURT: The Pennsylvania Court.

THE WITNESS: No. I am assuming that that would be done in accordance with the Pennsylvania Court's statute.

Q In your opinion, are the prices yielded by appraisal proceedings fair?

A This is a form of protection and comfort that I always hope, as an investor, I will never have to rely on.

MR. RYAN: Your Honor, I have two questions.

THE COURT: Proceed.

RECROSS-EXAMINATION

BY MR. RYAN:

Q Dr. Murray, in 1969, September of 1969, you were not required to amortize good will, were you?

A Not under the APB rule.

Q So as far as Bangor Punta was concerned, its Piper investment, we didn't have a problem of amortizing good will?

A You had a problem with financial analysts who, long before the APB rule, were pretty impatient with those creations of phony good will items on balance sheets.

Q And my last question: If the prospectus contained a statement that Bangor Punta was enjoined for at least five years for merging, would that give you any comfort?

A Not really, because it really doesn't answer the question of what I might be selling as an investment banker, or buying. Five years is not very long.

Q From an advisor's standpoint, he looks beyond a year and a half or two years to five years?

A Indeed he does. He knows that the market will begin to anticipate long before the five years whatever is expected to happen down the road.

MR. RYAN: I have no further questions.

MR. LIMAN: I have none.

THE COURT: By the way, was there a change in the SEC rules in connection with conglomerates, requiring them to give individual accounting for the individual components of the conglomerate?

THE WITNESS: Yes. Much more disclosure.

THE COURT: When did that happen?

MR. RYAN: 1971, I think.

THE WITNESS: I think it is about three years old now where you have any line of business, 10% or more, or you have a multi-divisional, you must disclose both sales and earnings.

THE COURT: And the high multiple company would buy the low multiple company and this diffusion of earnings would be reflective in stepped-up values?

THE WITNESS: They were hiding the losers among the winners. They were in the same totals.

THE COURT: One other question: Do you know what the Chris-Craft price earnings ratio was in 1969, by any chance?

THE WITNESS: I don't know.

THE COURT: Off the record.

[Discussion off the record.]

THE COURT: We will convene tomorrow at 10:15, gentlemen.

32 pgr

[The proceedings were adjourned, to be convened on April 23rd, 1974, 10:15 a.m.]

* * *

CHRIS-CRAFT INDUSTRIES, INC.

- v s -

PIPER AIRCRAFT CORPORATION, HOWARD PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICOLAS M. SALGO, DAVID W. WALLACE and THE FIRST BOSTON CORPORATION.

60 Civ 2227

April 23, 1974
10:15 a.m.

MR. LIMAN: Before I call our first witness this morning, your Honor, I would direct your Honor's attention to Page 72 of yesterday's transcript. I would like to record our position on the record on that.

In a colloquy with me, your Honor stated, "I am merely asking you that question" -- referring to whether Bangor could elect more than half of an even board -- "because the Court of Appeals handed it to me to say whether that control was achieved in a sense that there could be a merger, and now I am asking the witness you produced here as to whether or not they could have voted a merger."

I would respectfully submit, your Honor, that that is not what the Court of Appeals handed to you and that, indeed, it is inconsistent and incompatible with the Court of Appeals' charge to you.

Secondly, your Honor, I want to make it clear as to my position with respect to what can be elected on this

board because ~~becaue~~ the by-laws of Piper have not been put in evidence before you at this trial.

The fact is, your Honor, that Bangor Punta can and has determined the number of board seats.

Chris-Craft, when Piper had an eight-man board, was given three seats. When Piper has had a ten-man board, Chris-Craft has been given four seats.

While it is true that 51%, per se, cannot, if there is a proxy fight, elect more than half of an even number, the fact is that the parties who control the machinery in the proxy fight can. I don't believe, however, your Honor, and I am not trying the case before your Honor on the ~~assumption~~ question of whether Bangor Punta gained control or whether it had the power to merge; that is not open because my interpretation of the Second Circuit decision is such that I believe we are here to determine the damages arising from Bangor Punta's gaining control.

THE COURT: Who is the next witness?

MR. AUSPITZ: Mr. Cohen, David Cohen.

D A V I D C O H E N , called on behalf of the Plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. AUSPITZ:

Q Mr. Cohen, state your occupation, please.

A I am a certified public accountant.

Q By whom are you employed?

A Arthur Anderson & Company.

Q Arthur Anderson & ~~Company~~ Co. are the independent auditors for Chris Craft?

A Yes.

Q Were you, at our request, asked to compute the actual interest costs on Chris-Craft's cash investment in Piper stock?

A Yes.

Q How did you perform that computation?

A This was performed by taking the total cash cost of the investment in Piper Aircraft as reflected on the books of Chris-Craft and applying interest rates to that amount. The interest rates used were based upon the funds that Chris-Craft had borrowed and had available for such investment beginning with the 6% subordinated debentures and ~~them~~ then, for any excess investment, we used a $15,000,000 loan from the Philadelphia National Bank ~~for~~ which the original interest rate was ~~a~~ the prime rate.

Q How did you compute the prime rate?

A We requested the Chemical Bank to provide us with a schedule, which they did, of the prime rate from the period 1968 to the present.

MR. AUSPITZ: Please mark this as the next exhibit.

MR. RYAN: We object to this line of examination as being irrelevant to the issues before the Court. Apparently they are attempting to offer what the interest charges, the carrying charges of their cash investment, was during this period of time. We contend it is not relevant.

MR. AUSPITZ: That's a legal issue, as we have discussed, with respect to other legal questions. I submit the issue should be decided at the appropriate time. The evidence should come in. We have briefed our claim. We are entitled either to ~~post~~ pre-judgment interest or to our actual interest incurred in the Piper investment.

[Plaintiff's Exhibit 157 marked for Identification.]

Q I show you Exhibit 157 for Identification and ask you if that chart summarizes the computation you have just described.

MR. RYAN: May I have a copy of that?

MR. AUSPITZ: I gave copies to you yesterday.

MR. SHIMER: May I have a copy, too?

THE COURT: I will give you mine.

A Yes. This is the summary that I had prepared.

Q The total at the bottom represents the actual amount of interest which Chris-Craft paid on its cash investment in Piper?

A Yes. On the ~~the~~ total cash cost of its investment.

Q At our request, did you also compute the comparison of certain projections used by Mr. Fitzgerald in his testimony which is in evidence as Exhibit AQ and Piper's actual performance during the years 1971 through 1972?

A Yes, I did.

Q What sources did you use in making that?

A The sources were the Fitzgerald report which showed the projections and the annual reports of Piper Aircraft Corporation which showed their actual results during those three years.

MR. AUSPITZ: I ask that this be marked as the next exhibit, please.

[Plaintiff's exhibit 158 marked for Identification.]

Q I show you Exhibit 158 for Identification, copies of which were provided to counsel last week, and I ask you if that is the comparison that you made?

A Yes, it is.

MR. AUSPITZ: Your Honor, I offer both Exhibits 157 and 158 in Evidence.

MR. RYAN: We have our same objection to Exhibit 157, which is the computation of interest.

We have no objection to 158, your Honor.

THE COURT: Mr. Cohen, what is this sheet in summary designed to indicate?

THE WITNESS: Well, your Honor, it was designed to show a comparison of the projected results to the actual results for Piper Aircraft. It just shows a comparison and shows the difference in each of the periods.

THE COURT: And the second sheet, what does that show?

THE WITNESS: That is taking the percentage relationships that appeared in the Fitzgerald exhibit and showing the projected relationships as they compare to the actual. Each of the items on there are percentages of sales for the same three years.

THE COURT: Both of these are keyed to Exhibit AQ?

MR. AUSPITZ: That's right. I have no further questions, your Honor.

THE COURT: Is there any cross-examination of this witness?

CROSS-EXAMINATION

BY MR. ARNING:

Q With respect to Exhibit 157 computing the interest costs of the investment, did you allow any portion of the investment to be attributed to the equity of the company or is it assumed 100% --

A We considered the actual method of investment. There was investment in cash and investment in securities when Chris-Craft issued their preferred stock. Obviously we did not consider that. We just considered the cash investment.

Q Confining yourself to the cash investment, did you assume that 100% of the cash came from borrowings and that no portion came from the net worth or equity of the company?

A We assumed in the original years that it all came from borrowings. In subsequent ~~Subsequent~~ periods, when the borrowing levels dropped below the cash investment, we did not add additional interest factors on.

Q I don't believe you have answered my question. I will ask to have the question read.

[Record read.]

A In the earlier years we assumed 100% came from cash borrowed. In later years, when the borrowings

dropped below the level necessary to carry the cash investment, we assumed that portion came from the equity of the company and no interest was assumed.

Q In other words, as long as there were debts outstanding in the amount in excess of the investment you assumed 100% cash from the debt.

A As long as these two specific debts were outstanding, the 6% debentures and the $15,000,000 borrowing.

Q How much were they reduced below the investment in this time period?

A In 1973 it was reduced by approximately, at one point, $2,200,000 below the investment.

Q Can you equate that to the interest expense shown for 1973 in your Exhibit 157, how much it was reduced?

A No, not as a specific item. I just did not add interest expense ~~to~~ for that amount.

MR. ARNING: I have no further questions.

Mr. Ryan does have a few questions on the other exhibit.

THE COURT: Have you a breakdown of what you did so that we can tell year by year what you are charging interest against, the dollar figures, and the source of the money?

THE WITNESS: I have a worksheet with scratches

on it, but I can have something prepared, your Honor.

THE COURT: Suppose you submit that so that we get a continuous flow for the period --

THE WITNESS: Fine.

THE COURT: -- as to the source of the funds that you are attributing to interest and the interest that you are charging on that basis.

THE WITNESS: Yes. I will be glad to do that, sir.

THE COURT: I would appreciate it if you typewrite it and get it well Xeroxed.

THE WITNESS: I will, sir.

CROSS-EXAMINATION

BY MR. RYAN:

Q I am referring now to Exhibit 158, Mr. Cohen, which is your comparison between Mr. Fitzgerald's projected sales and the actual sales which you, I understand, took off the books of Piper Aircraft Corporation.

A It was not off the books. It was from the reports of Piper Aircraft.

Q Did you make any inquiry, or try to ascertain, whether there were any reasons why in 1972 the projected sales of Mr. Fitzgerald, $97,800,000 were not met?

A No, I did not.

Q You just took the figures off the books themselves?

A Off the reports, yes.

MR. RYAN: I have no further questions.

MR. AUSPITZ: No redirect examination.

THE COURT: Is your answer the same in dealing with the projected income, that you didn't account for the factors that make the difference?

THE WITNESS: That's correct, sir. I did not.

THE COURT: You are excused.

[Witness excused.]

R O B E R T R O S E N K R A N Z, called as a witness on behalf of the Plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. LIMAN:

Q What is your position?

A I am a partner at Oppenheimer & Company, which is a brokerage and investment banking firm. My own responsibilities are in the corporate finance area.

Q Oppenheimer & Company is a member of the New York Stock Exchange and other major exchanges?

A Yes, sir, it is.

Q Give us your educational background.

A Yes.

I am a graduate of Yale University in Economics.

Q Did you receive a degree with honors there?

A Yes. Summa ~~Suma~~ cum laude, and I was a member of Phi Beta Kappa.

Q What did you do after graduating from Yale?

A I am a graduate also of Harvard Law School.

Q What class?

A Class of 1965.

Q After graduating from Harvard Law School in 1965, did you engage in the practice of law?

A Yes. I engaged in the practice of law with the firm of Cahill, Gordon & Reindel, and my specialty was taxation.

Q Until when?

A It was until, roughly, the summer of 1967.

Q Then what did you do?

A I then joined the RAND Corporation in their Economics Department, and I was working on foreign policy matters and also municipal finance.

Q When did you leave that think tank?

A I left the RAND Corporation in January of 1969, and I joined Oppenheimer & Company in February of 1969, so I have been there a little over five years.

Q When did you become a partner?

A I became a partner February 1st of this year.

Q What are your responsiblities at Oppenheimer?

A My responsibilities throughout this period have been in the corporate finance area which includes mergers and acquisitions, raising capital, valuing companies in terms of their investment merits, and I particularly acted ~~attended~~ in transactions where Oppenheimer & Company itself was a principal, in other words, where we were investing our own money or we were raising money for our own account.

Q In the course of your responsibilities, have you been required to engage in the valuation of securities?

A Constantly.

Q And the valuation of companies?

A Yes.

Q Your resume is set forth in the report you have prepared?

A Yes, that's correct.

Q Mr. Rosenkranz, was Oppenheimer & Company asked to express an opinion concerning Chris-Craft's holdings in Piper Aircraft Corporation as of the beginning of August and as of the beginning of September , 1969, under certain assumptions and circumstances?

A Yes, it was.

THE COURT: Mr. Liman, before we go any further,

I would like to have you indicate the qualifications of this witness to express opinions.

I have carefully examined his curriculum Vitae and I am at a loss to follow from that the basis on which you claim that this gentleman is qualified for purposes that we have here.

MR. LIMAN: Your Honor, I will note that no other party has asserted such an objection.

THE COURT: It is part of my job to value here, and if you and the other side together fail to cooperate with the Court to give me the necessary information, I still cannot abdicate my duty.

MR. LIMAN: Your Honor, I would be very happy to go over the qualifications again.

BY MR. LIMAN:

Q Mr. Rosenkranz, how often do you engage in valuation of securities in your profession ?

A A constant part of my responsibility is to value both securities and interests in companies or entire companies in connection with mergers, acquisitions, potential public underwritings, private financings, and investments by Oppenheimer & Company itself. It is of companies of a wide variety of descriptions.

Q In engaging in these valuations , do you use

certain techniques?

A Yes, sir.

Q Based on your experience at Oppenheimer, do you believe that these techniques are techniques recognized in the securities industry?

A These are the recognized techniques of investment analysis, economic analysis, that are used widely in the securities industry and the investment field.

Q You said a focus of your activity is in evaluating securities for Oppenheimer's own investments?

A Both securities and other investments.

t2 am

Q Does Oppenheimer & Company rely upon your evaluations of securities and companies in terms of making its investments?

A Yes, it does.

Q In putting up its own money?

A Yes, exactly.

In a sense, my job has been described as being Oppenheimer's investment banker when I am operating in this capacity.

Q Have you, in the course of your responsibilities, been required to express opinions on private placements?

A Yes, sir.

Q On securities for which there is no public market?

A Yes.

Q On securities for which there is a substantial public market?

A Yes.

Q On securities for which there is a small outstanding float ~~note~~?

A Yes.

MR. LIMAN: I submit, your Honor, that the witness is qualified to express the opinions on questions being posed to him.

THE COURT: I make no finding on the subject at this time.

MR. LIMAN: Thank you.

Q Have you prepared a report?

A Yes, sir, I have.

Q Was that report prepared by you in the consultation with other partners and associates at Oppenheimer?

A That is correct.

Q And Oppenheimer has puts its name on it?

A That is right.

Q And you are the person who had the primary responsibility for preparing that, am I correct?

A Correct, sir.

MR. LIMAN: I have handed your Honor a copy of the report as well as the defendants. I would mark a clean copy as our next exhibit for identification.

XX (Plaintiff's Exhibit 159 was marked for identification.)

Q Mr. Rosenkranz, I would ask you to assume that on or about August 7, 1969, Chris-Craft held approximately 40.6 per cent of the outstanding stock of Piper Aircraft Corporation; thaton the same date Bangor Punta held approximately 30.5 per cent of the stock of Piper Aircraft Corporation, and that the balance of shares were held by shareholders

other than Chris-Craft or Bangor Punta.

Are you able, on that set of assumptions, to express an opinion as to the value of Chris-Craft's holdings on that date?

A Yes, sir. In our judgment on those assumptions Chris-Craft's shares in Piper would have been readily marketable at not less than $58 a share.

Q Would you tell the Court how you arrived at that conclusion.

A Well, in arriving at that conclusion, we considered a wide variety of factors which are set forth and listed in the report that we prepared. But the basic guideline that we used in arriving at this $58 figure is market price, the price at which we felt a hundred shares of Piper would have sold on the New York Stock Exchange in August of 1969, absent the fight for control.

Q Now, in fact, the last trading day on the New York Stock Exchange, August 8th, Piper had closed at 69.50 a share, and during the preceding month, July, its range had been from 62 to $73. But that market was obviously affected by the fact that Bangor Punta and Chris-Craft were waging a contest for control.

So what we tried to do is estimate what the price would have been but for this contest by projecting forward certain indices based on the last price that obtained prior to

the time when Piper's market would have been affected by the control contest.

That last point that we chose was December 31, 1968.

Q Why did you choose that?

A Well, it was a year end, a quarter end, a convenient point, and ~~another~~ since Chris-Craft had made its initial purchases a few days prior, there was no indication at that particular point that its purchases had influenced the level of market prices.

Q When you say that there was no indication that they had influenced the level of market prices, you mean that the market prices had not gone up?

A The market prices hadn't gone up reflecting Chris-Craft's small purchase prior to that particular point in time.

As of December 31, 1968, Piper was selling at a certain relationship in terms of its own price earnings multiple to the price earnings multiple of the Standard & Poors industrial stock index, and a certain relationship to the PE multiple of Cessna Aircraft Corporation which was its leading competitor in the industry.

And essentially at that particular point in time it was selling, I believe, at ~~132~~ 102 per cent of the

Standard & Poors multiple and about 163 per cent, if I -- yes, that is right, 163 per cent of the Cessna multiple.

Those relationships had more or less obtained not only on December 31, 1968, but also for the preceding period of approximately 18 months.

Q Were they in fact the relationship which Mr. Fitzgerald used in the report?

A Yes, they were. He used the relationship for, I believe, a 13 week period ending December 31, 1968, we used the relationship at one particular point in time, December 31, 1968, but I don't believe that there was a material difference in the numbers.

Now, at that particular point, we felt that there were a number of reasons why Piper was selling at this premium to the Standard & Poors averages and to the Cessna multiple. Among the reasons were the fact that Piper's earnings performance over the preceding two to three years had been very, very strong, stronger than Cessna and stronger than the S&P index as a whole.

Secondly, we felt that Piper's mix of business was a more favorable mix of business than Cessna in that approximately 25 per cent of Cessna volume was in military and aerospace related sales, and it was widely regarded at the time thatthis particular sector was in for much slower

growth than the private general aviation sector.

Third, Piper was regarded, we believe, as a potential acquisition candidate, and all three of these considerations make the market price as of December 31st a fair reflection ~~on~~ of value.

Now, starting from this December 31, ~~1969~~ 1968, level, we then assumed that in August Piper's PE ration relative to Cessna's PE ratio would be the same as it was --

Q What about Piper's PE ratio relative to the Standard & Poors PE?

A Yes. Well, we did actually both, two separate calculations. One assuming that it maintained the beginning of the year relationship to the Standard & Poors multiple, where we derived a price of $59.13; the second, assuming that it maintained its year end relationship to the Cessna multiple through which we derived a price of $56.64.

Q Did you consider that the assumption that the ratios of Piper to Cessna PE and Piper to Standard & Poors PE would remain the same to be a reasonable assumption based on market phenomena and data available to you?

A We considered that a reasonable assumption, A, because it had prevailed pretty much in that relationship for the prior 18 months; and B, because the reasons that we

felt explained the premium seemed equally applicable in August as they did the preceding December.

Q Namely?

A Namely Piper's better mix of business, its better earning performance, and the fact that it was a potential takeover candidate.

Q Did you make an attempt to forecast what the market price of Piper would have been on September 5th if the control contest stood on that date at Chris-Craft having roughly 42 per cent of Piper's stock, Bangor Punta having roughly 37 per cent of Piper's stock, and the rest being held by other shareholders of Piper?

A Yes. And I would not have seen any material difference between the August figure and the September figure.

Q Why is that?

A Because essentially there hadn't been a movement in earnings ~~of these prices~~ ratios, either the Cessna or the S&P, ~~averages~~ that I would have regarded as material during this period.

Q Continue on.

A Well, as I indicated, we did project forward a market price as of August 1969, using the relationship to the Standard & Poors and using the relationship to the Cessna multiple.

Q Did you derive a multiple for Piper based on this relationship between the Cessna and Standard & Poors multiples?

A Yes, that is right.

Q What was the multiple that you derived?

A Well, based on the ~~Standard~~ Standard & Poors relationship we derived a multiple of 20.25 times and in relation to the Cessna multiple, we derived a multiple of 19.4 times. Each of those multiples we applied to earnings of $2.92 for the full fiscal year ended September 30th.

Q What was your conclusion based on your analysis?

A Well, there was one other step before we get to the conclusion, and that is, we wanted to be able to test the reasonableness of proceeding this way. We wanted to put this multiple into some kind of long term perspective, so we took a 37-month average of Piper's multiple, going back, in other words, for a slightly longer than 9-year period. And that average multiple turned out to be 20.2. So again, it was very, very close and very much in the range of the 2 multiples that we had derived with reference to a much shorter time period.

Q When you said a 37-month, you mean 37 quarters. Is that what you mean?

A 37 quarters, I am sorry.

Q What conclusion did you reach from doing that?

A Well, the conclusion was that essentially it reinforced the other two methods inasmuch as it yielded a figure of 20.2 as a multiple or 58.98 as a stock price, indicating, in other words, that what we were projecting for August or September 1969 was not inconsistent with the very long term 9-year average multiple at which Piper had sold.

Q Your conclusion, therefore, as to the price at which Piper would have sold --

A Our conclusion was that a round lot, 100 shares of Piper, would have sold at approximately $58 on the New York Stock Exchange in August or September, early September, 1969, absent the fight for control.

Q Did you make an effort to determine what the market value of Chris-Craft's block would have been on the assumptions which I gave you concerning the lead by Chris-Craft in the contest?

A Well, what we did, we attempted to analyze the factors that would determine whether Chris-Craft's block was readily marketable at the price that we felt would have been prevailing on the New York Stock Exchange. It was not part of our assignment to try to assign a premium based on the hypothesis that Chris-Craft had a plurality of the Piper shares.

Q What did you do to determine whether or not the block could have been marketed at this price of $58 a share?

A Well, we looked at the behavior of Bangor Punta for one during the period in question. This was a period when Bangor Punta was purchasing for cash blocks of Piper Aircraft Corporation which aggregated approximately 200,000 shares for a total consideration of some $17 million.

Now, we felt that --

MR. RYAN: Excuse me, your Honor. I don't think we have a time period here. Is he talking about August the 7th ~~nor~~ now ~~ow~~ September?

Q What period are you looking at in terms of when they spent money?

A I am talking about the period subsequent to their purchase -- their arrangement with the Piper family through the period when they obtained 50 plus per cent.

Q The period from May 1969?

A From May through the beginning of September.

MR. RYAN: After we had acquired the 50 per cent, Bangor Punta acquired the 50 per cent, is that what you are directing your testimony to?

A From the point when Bangor Punta acquired the Piper family position through the point in time when it had

acquired over 50 per cent .

MR. RYAN: Thank you.

Q In other words, up to the point where it acquired the over 50 per cent.

A In other words, Bangor itself was willing to have paid 17 or $18 million for slightly over 200,000 shares of Piper stock for cash during this period. That seemed to us to lend credence to the notion that a 700,000 share block, approximately, held by Chris-Craft would have been readily marketable for consideration of about $40 million which is what this $58 per share figure works out to.

We also felt that Chris-Craft was in a very good position itself to win the contest, given the assumptions as stated, namely, a plurality of 41 per cent with Piper -- with Cessna behind.

Q With what behind? Did you say --

A With Bangor Punta behind by a margin of anywhere from 6 to 10 percentage points.

So that Chris-Craft itself could have won, it could have sold its position to Bangor Punta from a position of considerable bargaining strength, or, third, it could have conceivably found a third party who would have been willing to assume Chris-Craft's position here and go on from that position to attain control.

Q As a result of these steps and your reasoning, what was the conclusion of your firm?

A Well, our conclusion was that this Chris-Craft block would have been readily marketable at $58 a share if not at a premium reflecting its plurality position and the potential that that position had to ultimately go forward and gain control.

Q Did you then consider, at my request, a change in position of Chris-Craft's block on September 5, 1969, after Bangor Punta gained more than 50 per cent of the outstanding stock of Piper and when Chris-Craft then had slightly over 42 per cent of the stock?

A Yes, sir, we did.

Q In giving consideration to that position, did you reach a conclusion as to whether Chris-Craft's block had suffered any deterioriation in value from the value it had on the prior assumptions which you made?

A Yes, sir.

Q Would you explain to the Court what the factors you considered in concluding that there had been a deterioration in value and then how you quantify it.

A Well, we felt that once Bangor Punta had achieved majority control here that it did rather drastically affect both the valuation and the marketability of

of Chris-Craft's position.

Chris-Craft before had a plurality block which was salable either to Bangor Punta who wanted control or to any third-party who wanted control or had value to Chris-Craft itself in terms of its potential to obtain a control position.

Once Bangor Punta had 51 per cent Chris-Craft had no bargaining power any more.

There are an awful lot of ramifications to a control position which we took into account. First, control carries with it the right to choose management, and to set policy, and ~~this~~ these seemed to us to be critical issues in a business like ~~paper~~ Piper, which is very, very highly cyclical. This is not a company which runs itself. It needs management and needs good management, and once there is control in somebody else, Chris-Craft was in a position where it had no real ability to influence the choice of key management decisions and policy.

Second, control carries with it command over the cash flow produced by the company. Chris-Craft, as a non-controlling block holder, could only look to dividends for cash out of the Piper investment. It had no power to ~~delay~~ declare these dividends itself, and in fact no dividends had been declared.

So it had no access to the cash that the Piper enterprise was generating.

Q Are you familiar with the fact that since September of 1969 no dividends have been declared by Piper Aircraft Corporation?

A Yes.

Q Continue.

A The third ramification of a control position, as of that particular point in time, was that control enabled the owner of that control block to report earnings to its own shareholders on an equity basis. In other words, Bangor Punta was able, as an owner of 51 per cent of Piper, to report 51 per cent of Piper's earnings as its own. Chris-Craft, under the accounting rules that then applied, could report only dividends, which in fact had ceased.

Q Do you remember when those accounting rules were changed for the first time?

A No, I don't.

Q Would 1972 refresh your recollection?

A Yes, I believe that is right.

Finally, the fact that Chris-Craft was in a minority position and Bangor Punta in a majority position rendered the Chris-Craft block subject to being merged out

at any time, and this seemed to us highly relevant because Bangor Punta would have an incentive to arrange for a merger at a time that suited its corporate purposes, it could choose the package of securities, be they warrants, subordinated debt, or whatever that best suited its purposes, and Chris-Craft's only choice, or anybody who purchased its position, was either take what was offered or to seek statutory appraisal, a remedy under the laws of Pennsylvania.

That appraisal remedy is a very, very unsatisfactory one in the sense, A, that you are compelled to sell at a time of the purchaser's choosing; and B, the standards which are applied and the delays and the uncertainties, which I think I can get into later, are an important deterrence to anybody who would consider stepping into Chris-Craft's shoes once it had lost the fight here.

Now, these factors don't only go to the value of Chris-Craft's position, they also seem to go to the marketability of its position. No longer could they sell to an industrial company, because the industrial company's interest would have been in reporting earnings to its stockholders or to realizing a stream of cash income from the investment. They really couldn't sell to -- in a private placement to either a mutual fund or insurance companies or bank trust departments.

Q What do you base that conclusion on?

A Well, by September of 1969, the market for letter stock, investment letter stock, was in the process of drying up, and none of the letter stock buyers were buyers of positions as large as what Chris-Craft held in ~~paper~~ Piper. Many mutual funds ~~abide~~ are barred by either law or policy, as banks and insurance companies, from owning more than 5 per cent of the securities of a single issuer.

Q Do you agree with Goldman, Sachs conclusion in its report that this stock couldn't have been privately placed?

A Yes, I do agree with that.

Q Did you then make some effort to determine, on some basis, what the value of the position would have been on September 5th when you say tha[t] in your conclusion it wasn't marketable?

A Yes, we attempted to quantify what these various factors, which had influenced both value and marketability, which in fact in our judgment rendered the book virtually unmarketable, what they would do to value, and we took three different approaches to attempt to find a range of ~~sales~~ values.

The first thing we did was to look at Chris-Craft's Piper block as if it were a block of marketable

securities. In other words, starting with our ~~50~~ 58 valuation for a hundred share lot, what kind of discount would one apply for the fact that this block was unmarketable without a registration statement, and, B, represented at that point in time some six times the remaining float. ~~and~~ Our Exhibits 11 to 12 to our report list a series of transactions that were either prior or contemporaneous with this involving letter stock, stock which couldn't be sold without a registration statement, And there we found discounts from 4 per cent to 50 per cent that were averaging approximately 25 or 50 per cent.

We also looked at cases that involved -- these were court cases, tax cases and others -- where valuations were made of very large blocks in relation to the float, and there we found ~~discountings~~ discounts ranging from about 8 to ~~50~~ 30 per cent.

Now, we felt that the liquidity constraints here were far more severe in that the letter stock examples invariably carried with them a contractual right to demand a registration statement. None of them seemed to be as large in relation to the float as was the case in this particular block.

Similarly, the cases ~~that~~ where there were just discounted for blockage, none of them had blocks this big in relation to

a float this small. So on the basis of those precedents and in consideration of our own judgment on the severity of the illiquidity in Chris-Craft's position, we felt that a 60 per cent discount from the $58 figure was one that would reflect, from a market standpoint, what conceivably this could have been sold at on that ~~particular~~ particular line of analysis.

Q What other factors did you consider in trying to determine a value for the position?

A Well, the second approach that we took was to consider the appraisal valuation that Chris-Craft would have been able to look for had Piper been the subject of a statutory merger procedure under Pennsylvania law. Here we felt that in any kind of bargaining between Bangor Punta and Chris-Craft over the disposition of Chris-Craft's block after Bangor Punta had ~~one~~ won, the threat really is that if you don't come to terms, there will be a merger and all you can be sure of getting in a merger is your appraisal rights.

So ~~that~~ since that would have been such a big part of the bargaining process and since, as I understood the Court of Appeals' decision, there was specific reference made to Bangor Punta's power to compel a merger, we felt that this factor deserved independent weight, and what we tried to do is look as investment bankers and see what

might have been the likely outcome of a Pennsylvania appraisal proceeding, from the point of view of determining at what price we would ~~we~~ recommend somebody to step into Chris-Craft's shoes.

Q As an investment ~~investment~~ banker at Oppenheimer & Company, if somebody came to you and asked you about the price he should pay for a block like this, would you have taken a look at the Pennsylvania appraisal statute?

A Yes, naturally.

Q And the cases?

A And the cases.

Q Did you do that here?

A In fact that is what we did here, we looked at the Pennsylvania cases, we read a variety of general articles dealing with the appraisal remedy.

Q What conclusions did you reach as to this consideration?

A Well, it seemed to us that there were three principal approaches that the Pennsylvania courts seemed to take. One is net asset value, the other is actual market value, and the third is investment value. And there's very little guidance in the cases as to how these things are to ~~be~~ be weighted but we thought we would look at each one of them and see where it led us.

Now, the net asset value figure was, in our judgment, simply Piper's book value, which was $23.01 a share as of September 30, 1969.

The second consideration was actual market value. And there we felt that since we were looking at this from the point of view of somebody buying Chris-Craft's position, in other words, buying this lawsuit, so to speak, for appraisal ~~procedure~~ proceedings, I don't think he could have looked at market value as any particular source of comfort, ~~inasmuch as~~ At ~~at~~ that particular time Piper was selling on the Philadelphia-Baltimore-Washington Exchange, the market was exceptionally thin, markets of this type are vulnerable, particularly to declines at cyclical lows, there no longer could have been any institutional interest in the Piper shares, and so he wouldn't have known what the market would be or whether it might have been regarded by the Court as so thin and unrepresentative that it wouldn't have counted any way.

The third approach that the Pennsylvania courts take is investment value, which, as we understand it, is applying to the earnings of the company a capitalization rate that reflects the quality of those earnings in terms of their stability and their predictability.

And in trying to figure out what a Court might have done, a Pennsylvania court might have done, here

we looked at American industry generally, all manufacturing companies, and we found that their return on equity was roughly 12 per cent.

Piper was faster growing than most companies. It had a higher return on equity than most companies, both of which would tend to cut in favor of a lower capitalization or conversely a higher multiple.

On the other hand, it was an exceptionally cyclical business. We had asked United States Trust Company to put Piper in context for us and their report is in our -- the appendix to our report, of all American industry in terms of both growth and cyclicality.

And it turned out that the general aviation industry was more cyclical in terms of sales than all 49 of their industry categories, and was more cyclical in terms of earning than I think 47 of the 49. This was an exceptionally cyclical business which under the Pennsylvania standards, as we understood them, would normally call for quite a low multiple. So balancing these two factors of one that it was a growth -- a relatively fast growing company which had earned historically better than average rates ~~to determine~~ on its own equity, against the ~~exact~~ fact that ~~take~~ it was exceptionally cyclical, we felt and 11 per cent capitalization rate was appropriate, which works out to

approximately a 9 times multiple of earnings and from an investment point of view would project a value of $26.54 a share.

We had done that actually on the basis of actual September 30, 1969 earnings.

Conceivably a Court might have used the five year average which was $3.03, which might have produced a slightly although not materially higher number.

Q One thing, just for the record, to convert from a capitalization rate to a multiple, what do you do?

A It is simply the reciprocal.

Q 1 over --

A 100 over 11 is approximately 9.

So those are the three elements that a Pennsylvania Court would have taken into account in an appraisal proceeding. I would have guessed that they would have weighed the investment value considerably heavier than asset value, and that the likely range of outcome might have been in a range of something like $25 to $28.

But somebody stepping into Chris-Craft's shoes would not be willing to pay the average expectancy of what they may get. Rather they would want to pay some substantial discount to make an allowance for the fact that they have to wait, they have to litigate, they have expenses, and time delays, and a great deal of uncertainty, and so we felt that viewing Chris-Craft's position as a potential litigant in an appraisal proceeding, that nobody would pay more than $20 to step into their shoes.

Q Mr. Rosenkranz, you testified in terms of how a reasonable purchaser might look at the risk of appraisal; that market price would not give much comfort because in a thin market, in a cyclical industry, the market price on

the Philadelphia Exchange would be vulnerable. Have you, in fact, looked at the market prices on the Exchange in recent years in this period?

A Yes, I have. I think that the experience in that market very much bears up this point.

By May of 1970 Piper was selling as low as $12 a share. I believe its price today is around $10.

Q It has been somewhat higher, am I correct, at times?

A It sold as high as $30 in the intervening time.

Q Has it been, essentially, between that $30 level and $10 since May of 1970?

A I believe that is correct, yes.

Q That includes periods when both Bangor Punta and Chris-Craft bought some additional shares?

A That's right. The market -- We have indicated, in Exhibit 5 to our report, what the volume of trading was on the Philadelphia-Baltimore-Washington Stock Exchange during the whole year 1970. The trading was 137,000 shares which is, again, approximately 1/5 of the size of Chris-Craft's position.

By 1971 the entire year's trading volume was only 19,000 shares of which I believe close to half might have been Chris-Craft and Bangor Punta purchases.

MR. RYAN: Your Honor, could the witness please read back the 1970 trades of Piper securities, the volume?

THE WITNESS: I believe it was 137,041 shares.

Q Did you take any other approach to determining the value of a block that you say was essentially unmarketable?

A There was a third approach, and that was to view Piper as a defacto private corporation at that particular point, to disregard, in other words, the fact that there was the 7% in the hands of the public trading on the Philadelphia-Baltimore-Washington Exchange and to simply look at it as a private company.

As a private company selling at private company values, which are quite different from public company values, inasmuch as private companies don't offer the liquidity of public companies or the flexibilities, as a private company we felt that someone buying the enterprise on its investment merits, on a capitalized stream of income, would have employed the same approach as a Pennsylvania Court would have in figuring out the investment value. In other words, we would have capitalized the stream of earnings that Piper had demonstrated at a capitalization rate of 11%, which would have produced a value of ~~2654~~ $26.54.

However, Piper is not being valued here as an

entire enterprise. We are talking of a minority interest. A minority interest, in our judgment, is worth less than the proportionate share of the total value of the enterprise. We thought it was worth a minimum of 20% less, which would, again, produce a valuation of about $21 a share.

To recapitulate here, we did three different things.

We viewed it as a public company trading at 58, discounted for liquidity.

We looked at it as a private company where we would have felt it would have been worth about 26 or 27, but discounted for minority status of Chris-Craft's holdings.

Third, we looked at it as a potential lawsuit involving an appraisal proceeding, and we tried to see what somebody would pay to step into Chris-Craft's shoes in that potential lawsuit.

These three approaches each produced values in the $20 to $23 range, which is our judgment as to how Chris-Craft's block in Piper can be valued after Bangor Punta had achieved control.

Q Have you given consideration as to whether your firm would have been willing to underwrite Chris-Craft's 42% interest when Bangor Punta had over 50%, whether you would have been willing to serve as a managing underwriter

for that position?

A I have considered that. I have discussed that with my other partners who have responsibility in this area, and our feeling was that we would not have been willing to do that.

Q Why?

A Well, there are a number of problems with an underwriting under these circumstances.

The first problem is that Bangor Punta had announced its intention to merge and to achieve total control of Piper through a merger.

Q What are you referring to?

A I am referring to its press releases and the statements in its exchange offer.

So that there was in this position ~~of~~ an overhanging threat of merger, and any underwriter who would underwrite such a distribution would have to deal with the possibility that any time after the underwriting the person who acquired Piper's shares would suddenly find himself instead of owning common stock maybe having warrants, maybe having debentures or, you know, any miscellaneous package of securities, no longer Piper securities, but Bangor Punta securities.

This would be, at a minimum, a major risk factor

that would have to be disclosed and highlighted in the prospectus, but also I think it would create serious ethical problems for an investment banker who would be advising clients to buy one type of security, namely Piper common stock, knowing full well that shortly thereafter they could wind up with a totally different package of securities and a different issuer.

The second difficulty in doing an underwriting of Piper shares was this Philadelphia-Baltimore-Washington market. A market that is that thin is a terrible embarrassment in a sense for an underwriter because there is no way that he can sell shares at a price higher than they are selling on that market. In other words, if by May of 1970, to take an example, the Philadelphia-Baltimore-Washington Exchange market was $11 for Piper, you could not very well do an underwriting at 20, 30 or 40. You were stuck with that market price pretty much as a ceiling.

On the other hand, there was no way that that market price was a floor. The mere fact that it might have been selling at a particular level on the Philadelphia-Baltimore-Washington Exchange where 80,000 or so shares were listed doesn't help you in any sense in distributing a block of nearly 700,000 shares.

Q Mr. Rosenkranz, you referred a moment ago to press

releases. Were you referring, in particular, to the May 8, 1969 press release?

A I just don't recall the date. If I could look at it --

Q It is 329 of the appendix on appeal.

Would you read this [indicating] and if this is what you are referring to point out the language [handing.] Read it through, please.

A Well, in the announcement of the agreement:

"They said they regarded the agreement as a first step in a proposed consolidation of the two companies."

Q Continue reading.

A [Reading:]

"Under the agreement the Piper family" --

Q No. Read it to yourself.

A [Pause.] It goes on to indicate that the Piper family would strongly support the merger and would recommend it to all shareholders.

MR. RYAN: May he read the language?

Q The last language you were referring to, please.

A [Reading:]

"Mr. Piper said that in view of Bangor Punta's longstanding policy of maintaining autonomy in the management of its operating companies and the similarity of

operating philosophies between the companies, he and the Piper family would strongly support the merger and would recommend it to all shareholders."

Q Did you, in reaching your conclusions and in preparing your report, work independently of Bear Sterns and Professor Murray?

A Yes, sir, I did.

MR. LIMAN: I have no further questions.

I offer Exhibit 159 for Identification into Evidence.

MR. RYAN: We reserve any objections we have to the report until after cross-examination, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. RYAN:

Q Mr. Rosenkranz, you say you became a member of your firm on February of this year, a partner?

A Yes.

Q Prior to that time you were in the corporate finance department?

A Right.

Q Were you actively engaged in any of the underwriting activities of Oppenheimer?

A I participated in those activities, yes.

Q Did you have any other responsibility for deciding which securities Oppenheimer would underwrite and which securities they would not underwrite?

A My principal responsibilities were not in the underwriting area per se.

Q Would you characterize your firm, Oppenheimer, as one of the major underwriters on Wall Street?

A No, sir, I would not.

Q Do you know approximately how many public offerings they have underwritten since 1966 as the lead underwriter or even on a co-basis with First Boston Corporation?

A Approximately 10.

Q Would 8 be closer to it?

A It is possibly true.

Q Would you characterize the underwritings that you were engaged in as major capital raising efforts or were they relatively small underwritings?

A They varied in size. I think the largest might have been about $20,000,000 and the smallest maybe $3,000,000.

Q Prior to your assuming this responsibility for Chris-Craft, had you made any investigation into the general aviation field?

A No, sir, I had not.

Q So all your total familiarity with the general

aviation business is as a result of your assignment here as an expert witness for Chris-Craft?

A As related specifically to the general aviation industry, yes, sir.

Q All of your learning is incorporated in your report?

A I would not agree with that, sir.

Q Other than the excerpt which you have inserted from your report from United Trust Company, all the other information was information that you gathered, or was gathered under your supervision; is that correct?

A I think that the judgments expressed in this report come from a lot of experience in valuing investments, in negotiating in behalf of Oppenheimer & Company as a principal for investment in various vehicles, including acquisitions of large blocks of public companies, and control positions of private companies, so that there is a lot of experience both as an economist, as an investment banker and as a lawyer, that is, obviously, not contained within the pages of this document.

Q You characterized the general aviation business as being highly cyclical, quite an unusual business?

A Yes. That's right.

Q It might require some technical expertise to understand the general aviation business as distinguished

from your general business knowledge?

A Well, I feel that what we attempted to do is put the general aviation business in the context of business generally, and we are always looking at companies that are, more or less, cyclical, that have higher or lower qualities of earnings, higher and lower predictability of earnings and growth rates, and I would submit that a broad exposure to a variety of industries is a better preparation for putting this particular situation in context than would specific industrial expertise directed at the general aviation industry.

Q You note in your report that your firm, Oppenheimer, has some relationship with Chris-Craft?

A That's correct.

Q Would you describe that relationship for us, please.

A We have been a financial advisor to Chris-Craft. Our principal function has been in connection with a recapitalization of Chris-Craft through an exchange offer to its convertible debenture holders.

THE COURT: I notice you have constantly referred to the editorial, "we". What, if any, connection, did you have with advising Chris-Craft since June of 1972?

THE WITNESS: That was my personal responsiblity, sir.

THE COURT: So it is "I" rather than "we"; isn't that right?

THE WITNESS: It is "I" in the sense --

THE COURT: You were not a partner until February of 1974 so you could not be "we".

THE WITNESS: ~~It is~~ It is "I" in the sense it was my responsibility, but the advice represented concensus of our firm's judgment as to what we felt was appropriate.

THE COURT: What corporate financial background did you have prior to June of 1972?

THE WITNESS: I'm sorry?

[Record read.]

THE WITNESS: [continuing] Well, from February, 1969 on I had been at Oppenheimer & Company working on various corporate financial activities.

THE COURT: Under whose supervision?

THE WITNESS: Under the supervision of the partner heading the corporate finance department, who was Thomas Seward, and the senior partner of Oppenheimer & Company, Leon Levy.

THE COURT: Were there any other persons in that department other than yourself? Juniors?

THE WITNESS: Yes.

THE COURT: How many?

THE WITNESS: Eight.

THE COURT: You were one of eight juniors in that department?

THE WITNESS: At that particular point in time -- When are you talking about? June of 1972?

THE COURT: Prior to June of 1972.

THE WITNESS: I don't recall the exact number of people in the department in June of 1972. It was approximately eight.

THE COURT: Was this Chris-Craft account assigned to you in June of 1972?

THE WITNESS: It was actually an account, I think, that I introduced to the firm, so it was assigned to me in that sense.

THE COURT: What is the nature of the contract or other relationship?

THE WITNESS: We have no contractual relationship with Chris-Craft.

THE COURT: You may proceed.

BY MR. RYAN:

Q Were you paid a fee for your services in Oppenheimer?

A In what connection?

Q In your connection as a financial advisor.

A Yes, sir.

Q Do you happen to recommend to any of your clients, Oppenheimer's clients, that they should invest in Chris-Craft stock?

A No, sir. We did not. We would regard, incidentally, an investment banking relationship as precluding any recommendation of that type.

THE COURT: You didn't take it on for that purpose, did you?

THE WITNESS: No, but it is an incident of an investment banking relationship that you cannot -- or at least we don't feel that we can, as brokers, recommend the securities of investment banking clients.

BY MR. RYAN:

Q Mr. Rosenkranz, you read the decision of the Court of Appeals?

A I did.

Q In this matter?

A Yes.

Q Did you read the portion of the decision of the Court of Appeals reads as follows:

"The measure of damages should be the reduction in the appraisal value of CCI's Piper holdings attributable to BPC's taking a majority position and reducing CCI to

~~taking~~ a minority position and thus being able to compel a merger at any time."

A Yes, sir, I did.

Q Do you recall that language?

A Yes.

Q I note on Page 21 of your report you state:

"It should be noted that what is relevant here in our judgment, is not the valuation we would have made had Piper been subject to a merger appraisal proceeding in September of 1969, rather it is the price at which we believe an arms' length purchaser would have been willing to assume Chris-Craft's position."

Do you recall that statement?

A Yes.

Q Do you consider that statement in your report on Page 21 to be consistent with the language of the Court of Appeals?

A Yes, sir, I do. I think what the Court of Appeals is asking for is our appraisal of the price at which Chris-Craft's block of Piper could have been sold between a willing buyer and a willing seller under two different sets of factual assumptions, and that is what this report has given.

Q That's what your opinion is? In other words,

it is not the appraisal value but it is your opinion as to what this block could have been sold for to some hypothetical third party under several sets of circumstances; is that correct?

A Could I have that read back?

[Record read.]

A [continuing] What we have given here is not a statutory Pennsylvania appraisal as if ~~he~~ we were hired by a Pennsylvania Court or as experts in a Pennsylvania appraisal proceeding to apply their formulas to valuation. What we have given is our appraisal of what this block would have sold for between a willing buyer and a willing seller, not necessarily hypothetical either.

I think we have been influenced by [A] The value in this block that was inherent in Chris-Craft's potential for obtaining control; [B] The potential of working out a deal with Bangor Punta on the position of strength; and [C] I would say, would be the hypothetical possiblity of a third party purchaser.

THE COURT: I will ask the Reporter to read that question again.

[Record read.]

THE COURT: What is a simple answer to that question?

THE WITNESS: I think it is the answer I gave.

THE COURT: You may proceed.

Q In your direct testimony you mentioned as one of the other characteristics to which you attributed this higher multiple to Piper when you arrived at your $58 that Piper was a potential acquisition candidate. When did that first come into your mind? Were you here yesterday listening to Dr. Murray?

A Yes, I was.

Q Does that thought appear in your report which is marked in Evidence?

A No, sir, it does not. It was a factor --

Let me try to put it in this context: What we were trying to do, was say what the market would have -- how the market would have valued this block as of December 31, 1968 and carried forward those principles to August of 1969.

The only relevance, it seems to me, of Dr. Murray's suggestion that there was an appraisal -- that there was a potential takeover value here or, indeed, my two other suggestions, that Piper's earnings performance was particularly strong, its mix of business was particularly favorable, it simply ~~suggesting~~ suggests that the market was not irrational at that particular point, that this didn't

represent an ~~abhoration~~ abberation but rather it was something that reflected a condition that had obtained pretty much for eighteen months prior to that, and a condition which in the mind of investors could have had some reasonable basis and logic.

Q I ask you, though, when the thought first came into your mind that the factor that Piper was a potential acquisition candidate --

A Okay.

That thought came into my mind while I was working on this and doing research on it, and it did not come into my mind yesterday on hearing Dr. Murray's examination.

Q You just merely didn't include that in your report as not being a material item?

A I did not regard it as terribly material.

Q Another sentence you have in your report, I think you explained it on direct but I wanted to be sure, on Page 10:

"We do not feel that the New York Stock Exchange market price as of August, 1969 could be a sole indication of value because that market was then affected as it had been since the beginning of the year by the contest for control being ~~wedged~~ waged by Chris-Craft and later Bangor Punta."

Your term "value", you are referring to market

value, aren't you? It is at the top of the page. It is the lead sentence.

A That's correct.

Q Did I understand your direct testimony is that the market price of Piper securities in August of 1969, because of the affect of Bangor Punta, Chris-Craft, and probably arbitragers, was not really any indication of value?

A That's not what I meant to say. I think I really said it best the way it is written here.

THE COURT: Was the market price in August of 1969 an indication of value?

THE WITNESS: Yes. It was an indication of value, but not a sole indication of value. It does not, for example, tell you where the stock would have sold but for the contest for control. On the other hand, it is evidence of a marketability of Chris-Craft's plurality block, the fact that people, with Bangor Punta in particular, were buying large blocks of stock for cash at very high prices.

Q When?

A Through the period from May through September.

Q May through September?

A Or May through August.

Q May through August? August 7th? That was the close of the exchange offer. Are you referring to the 100,000 shares that Bangor Punta purchased in August? Is that included in your opinion?

A I am referring to the shares that Bangor Punta purchased from the Fund of Funds.

Q The May purchases?

A Yes, as well as I think the purchases that Bangor Punta made subsequently that were an indication of the value in cash of marginal shares of Piper to a contestant for control.

Q Are you saying that Bangor Punta purchased shares of Piper Aircraft after the May purchases through August 7th? Is that what your research developed?

A They purchased 78,600 shares on May 14th, 1969.

Q They bought another 40,000 shares by the end of May 28th, 1969.

A Right.

Q A total of 120,000 shares.

Now, between purchases on May 28th, 1969 and August 7th, 1969, did your research develop that Bangor Punta was buying securities for cash?

A No, sir. I'm not sure of the answer. I'm sorry.

Q Do you think that's a relevant fact for basing

your opinion as to what the possible price or consideration that Bangor Punta would have been prepared to pay for Piper shares owned by Chris-Craft?

A I think there is enough evidence of what Bangor Punta would have paid in its exchange offer documents, its actual cash purchases, and the deal it made with the Piper family.

Q Your answer, then, is no?

A Let me hear the question again.

[Record read.]

A [continuing] What you are referring to is open market purchases in the period of June through August 7th?

Q Your cash purchases that you referred to earlier in your testimony.

THE COURT: Mr. Rosenkranz, you are in this position: You have told me, and you told Mr. Ryan, that the cash purchasing that Bangor Punta was doing was a relevant consideration of the market price in the period from May 20th through August 7th. You were then asked, were there any such purchases? You say you don't know. Now Mr. Ryan wants to know, would such purchases have been relevant to your thesis?

THE WITNESS: I don't think they would have

been relevant.

THE COURT: So you withdraw the notion that Bangor Punta's purchases had something to do with the market price; is that it?

THE WITNESS: Bangor Punta was a contestant in this fight for control.

t4 am

THE COURT: Look, there is no use in your going off rapidly in another direction. If my question is not answerable, I will accept your statement thatit is not answerable, but don't give me something else I haven't asked for.

I want to find out, are you relying on Bangor Punta's purchases for cash or not in your value of $58?

THE WITNESS: Not specifically its purchases for cash.

THE COURT: Unspecifically are you referring to it; specifically or unspecifically in any way?

THE WITNESS: No, I'm not.

THE COURT: All right.

Q As I understood your testimony on your direct examination, Mr. Rosenkranz, you testified that in the opinion of your firm -- I assume yourself -- that Chris-Craft's 41 per cent block, approximately 41 per cent block, of Piper's securities which it owned on August 7, 1969, and at that time Bangor Punta owned approximately 31 per cent of the Piper shares and the balance were not owned either by Chris-Craft or Bangor Punta, would have been readily salable at $58 a share; is that correct?

A Yes, sir.

Q You also testified, I believe, that on or about

September 5th, when Chris-Craft owned approximately 42 per cent of the Piper shares and Bangor Punta owned approximately 37 per cent of the Piper shares, that again Chris-Craft's block would have been readily marketable at $58 a share; is that correct?

A That is correct.

Q Who you think would have been a possible purchaser of such a block?

A I would say that the likeliest possible purchaser was probably Bangor Punta itself. The block also had value because it carried with it the potential that Chris-Craft itself could have succeeded in this contest and conceivably a third purchaser, any of the conglomerateurs who were active in the period could have either assumed Chris-Craft's position or both positions.

Q We will take your second assumption, in which you say that you assumed that Chris-Craft had a potential for acquiring the necessary shares to give it 50 per cent plus of Piper Aircraft Corporation. And you arrived at your conclusion that Chris-Craft was a possible purchaser. Did you consider the situation which existed at that time in that did you examine into Chris-Craft's financial resources available to it?

A Yes, I did.

Q What was the nature of your investigation?

A I reviewed the published financial information that Chris-Craft had available for that period of time, and I had conversations with the officers of Chris-Craft.

Q That was all?

A That is right. Wait. I also reviewed portions of the preceding trial in which evidence was given on the availabilityof additional financing.

Q Are you referring to the trial testimony at the trial of this matter by Mr. Burnham and his associate?

A That is correct.

Q And that entered into your calculations.

Did you ever inquire or discuss with the Chris-Craft executives as to whether there was any default under any existing loan agreements outstanding which prevented Chris-Craft at that point from either borrowing any money or paying any consideration for additional securities without the consent of the lenders?

A I believe that there was such conditions, but it was my judgment that Chris-Craft had spent $38 million in cash on its acquisition program, ~~and its lenders~~, at a time when Bangor Punta had issued subordinated debt, with very, very long periods of maturity, warrants, and common stock, Chris-Craft's position was so dangerous, because of the

enormous amount of cash that it had invested, that it had to, in a sense, that its lenders would not have allowed it, I don't believe, to wind up in this position; that they would have come up with the extra money necessary under whatever terms that would have enabled Chris-Craft to ~~be available~~ prevail here.

THE COURT: Did you ever inquire as to why they stopped buying, if that was the compulsive effectof their position?

THE WITNESS: I did inquire and my understanding is that they stopped buying because they felt they were defeated. Thatonce the shares, which are at issue here had been acquired by --

THE COURT: You mean to say that they couldn't for cash put out an offer that would have gotten them the 8 per cent?

THE WITNESS: Not once it was 45-41, no. They felt they were beaten and I think they were beaten.

THE COURT: Is there anything that would have stopped them from bidding for the 8 per cent if the other fellow had 49?

THE WITNESS: The prospect of defeat; that it was just throwing good money after bad.

THE COURT: You mean throwing goodmoney after

bad if they could get the 8 per cent?

THE WITNESS: No, the extreme unlikelihood that given a ~~46~~ 45 per cent to 41 per cent position that Chris-Craft could have prevailed when it would have had to -- when the other side only had 4 or 5 per cent to go, it just has an enormous --

THE COURT: You mean to say that the holders of the 8 per cent wouldn't have sold to Chris-Craft if they had come along with a cash offer of a lot of money?

THE WITNESS: If Bangor Punta only had to buy approximately half as much as Chris-Craft, at that particular point, it would have always been able to outbid Chris-Craft. Chris-Craft was beaten at that particular point in time, that is why I don't think it went forward.

THE COURT: Go ahead, Mr. Ryan.

Q In reaching your conclusion, did you make any investigation into the cash resources of Bangor Punta in August?

A Yes, sir, I did.

Q What did you find from your investigation as to what amounts of cash it had available to go into the marketplace to buy securities?

A I don't recall the exact number, but I think it was something in excess of $12 million.

Q How did you arrive at the $12 million?

A I don't recall in detail, but it was obvious to me that Bangor Punta did have substantial resources that they could bring to bear on this.

Q In May of 1969 Bangor Punta bought 120 shares at an average price of about 80, which was about 9 million odd dollars, correct? And we are now in September 5th, we have just purchased another 100,000 shares at an average price of 78, giving us another $8 million. There's 17 million right there which you have to consider that we would have because we wouldn't have spent it, correct?

A Right.

Q So perhaps it was more?

A Yes.

Q Did you ever consider the fact that we had a management of Piper that were supporting Bangor Punta's attempt?

A Yes, sir, I did consider that.

Q Do you think that was a factor we had and an advantage we had over Chris-Craft?

A Yes, I do.

Q And that was a factor which existed at 42-37 and 41-31; is that correct?

A Yes.

Q That's quite a leg up, isn't it?

A I think -- look, I think that Bangor Punta was certainly a viable contestant for control at that particular point, and the reason that I didn't want to give a premium to Chris-Craft over this $58 market level was because there was obviously some uncertainty as to who the ultimate victor was going to be. Chris-Craft, in my judgment, had a very strong probability of winning; on the other hand, I am equally certain that there was some possibility that they might not win.

THE COURT: Isn't that exactly what the situation was at 45-41?

THE WITNESS: No, I think by that point it was over.

THE COURT: There was no possibility at that point?

THE WITNESS: Well, Chris-Craft certainly -- the people --

THE COURT: I am asking, there was no possibility of Chris Craft winning after it was 45-41; is that it?

A I don't think so, no.

THE COURT: All right.

Q Well, just proceed on. You make another statement, indicated earlier in your testimony that one of the alternatives was that Bangor Punta might purchase Chris-Craft's

Piper block.

A Yes.

Q Is that correct? Then you have a statement in your report on page 13 which reads:

"If Bangor Punta itself wanted to gain majority control, it would have had to deal with Chris-Craft."

Why?

A Because Chris-Craft on those assumptions would have had a 41 per cent plurality. It would have been by far the largest block, or at least by a margin of 10 percentage points, and just as Chris-Craft could not have expected to win or at least could not have had any confidence of winning, given this 45 per cent to 41 position, so Bangor Punta, given a 31 per cent to 41 per cent position, could have had no confidence of winning.

I think that the memorandum that was introduced yesterday, which was Bangor Punta's own statement of plans regarding this acquisition, bears this out, where they say they don't want to commit any cash to the situation unless they're confident of getting over 51 per cent, and I don't think that that is a confidence that they would have possibly been able to have, given a 41 per cent to 31 per cent situation vis-a-vis Chris-Craft. In other words, if they wanted control, they would have had to deal

with Chris-Craft.

THE COURT: On your theory, why wasn't the fight all over so far as Bangor Punta was concerned when it was 41-31? That was a nice big --

MR. LIMAN: When was that, your Honor?

THE WITNESS: There wasno such point in time. That is a hypothetical that assumes that Bangor Punta didn't acquire shares which it in fact acquired and I understand illegally.

THE COURT: Was there ever a time when Chris-Craft was out ahead in the fight?

THE WITNESS: I don't think so. I think the most Chris-Craft ever had was about 33 at the end of its cash purchases, and Bangor at that point made its deal with the Piper family, and so at that particular point they were even. Chris-Craft was never in fact ahead.

MR. LIMAN: For your Honor's information, it was 33-31.

THE COURT: Please, don't interrupt the cross examination.

MR. LIMAN: I apologize, your Honor.

THE COURT: I agree with what the witness says.

Q You also testified at 42-37 that Bangor Punta would also have had to deal. Is your testimony the same?

A Yes, sir, it is.

Q Would still have to deal with Chris-Craft in order to get control?

A Yes,sir.

Q Yet how many shares was still available in the public market at that time? Figure 42 and 37 equals 79 per cent, leaving 21 per cent of the shares still available; isn't that correct?

A Right. With Chris-Craft --

Q All we would need would be 13 plus per cent, right?

A You would have made it two-thirds Chris-Craft where it needed one-third. I think at that particular point you would havebeen regarded -- I think Bangor would have regarded itself at the sort of disadvantage that it would either have to resign itself to defeat or come to some terms with Chris-Craft.

Q Now, your third alternative was the conglomerateur, referring, I assume, to somebody like Mr. ~~Link~~ Ling or Mr. Bludhorn, ~~or that;is~~ Is that what you are referring to?

A Well, it could be those type of companies or any company for whom Piper is a valid industrial fit. Grumman, for example, was at least at one stage in the game interested in this. I think not only conglomerateurs, but

other companies in related industries.

Q It is your opinion that such a third party would have paid $58 per share for Chris-Craft's Piper block on August 7th or September 5th; is that correct?

A If not a premium, yes.

Q If not a premium.

What would be your estimate, as an expert in these situations, as to their chances of sucess against Bangor Punta in the circumstances which existed in the hypothetical questions? We had 41-31, 42-37.

A I'm not sure I could give you a quantative answer to that but I would say that they would have a high probability of success.

Q Do you think that those conglomerateurs or third parties, we will call them, would have to assume that they may have to spend more than $58 a share in order to get the necessary 8 or 9 per cent of Piper shares?

A Yes, they would have had to make that assumption.

Q So they start out with an investment of buying Chris-Craft's block of 42 or 41 per cent, approximately a $41 million investment. In addition, they would be having to face having to buy somewhere about 120,000 more Piper shares in a hotly contested market; is that correct?

A That is correct. In other words, that their position would be very closely analogous to what Bangor Punta in fact did in making its deal with the Pipers in the face of Chris-Craft's position.

Q In other words, it had to be prepared to offer somewhere about $80 plus a share in order to beat what we said the minimum is; is that correct?

A That is correct.

Q So they're looking at another $12 million; is that correct?

A That is correct.

Q And this 52 million or so dollar investment is going to be made by a third party to enter into this dog fight against Bangor Punta?

A With a commanding lead.

Q With a commanding lead of 42-37 or 41-31, because your opinion is the same in both circumstances?

A Yes, that is right.

Q And there is no question in your mind that it is your opinion, and you are going to stick to that opinion?

A Yes, sir.

Q Just quickly we will go through.

I notice on pages 15 and 16 of your report, when you discuss the ramifications of the control position, you say

there are many ramifications of the control position, one is the right to ~~chose~~ choose management and set policy, and that is critical in a business as cyclical as Piper's. Is that your first consideration?

A Yes, that is right.

Q Would that be a consideration which would have any interest to a public investor who was buying a hundred shares?

A I am not sure I understand the question.

Q Well --

MR. LIMAN: Why don't you read the question back?

THE COURT: Would a hundred share stockholder be affected by that consideration?

A The hundred share stockholder is not particularly affected by -- I mean, he obviously doesn't have the right to set policy, but ~~his~~ his interest is, is there an identity of interest between himself and the people who are setting policy?

Q Aren't the considerations the first, second and third which you list on page 15? Aren't they applicable only to someone who is seeking to control the business?

A Oh, yes.

Q It is not applicable to the public investor as

such; he is not interested in controlling the dividend policy, he has nothing to do ~~with~~ with the dividend policy?

A No, these are considerations that apply to a control position or block that carries with it the potential for control.

Q You also make the observation on page 16 regarding the 4th consideration, that is, the fact that a minority shareholder can be merged out at any particular time, and you state there that "Bangor Punta was in a position to force a merger at the bottom of one of Piper's business cycles and could offer a miscellaneous package of securities chosen for its own advantage", correct?

A That is right.

Q Do you think that Bangor Punta would select the bottom of a Piper business cycle to effect a merger?

A I think any investor would regard that as a serious risk and I think it is very possible that they would have selected such a time.

Q Do you think that perhaps the appraisal proceedings, which are available to an investor under Pennsylvania law, might ameliorate such an influence upon an appraisal award, being at the bottom of a particular cycle?

A They might tend to ameliorate it but businesses

are valued lower at cyclical bottoms. If you choose the bottom of the cycle, you are going to have lower earnings to report, you are going to have a less favorable trend of earnings, to the extent that the Philadelphia-Balitmore-Washington market is taken into account, you will undoubtedly have a lower market price.

So the factors that get plugged into a statutory appraisal tend to work ~~it~~ adversely at cyclical lows.

Q Thenyou also state here that"Bangor Punta could ~~f~~offer a miscellaneous package of securities chosen for its own advantage."

Well, now, assume that it was merging Chris-Craft. Could it orfer a ~~pekage~~ package of securities to Chris-Craft and force it to accept that package?

A Well, it could put Chris-Craft in the position of either accepting the package or taking statutory appraisal.

Q In other words, that in effect Chris-Craft would have the option of receiving its value of its 41 per cent interest in cash; is that correct?

A The Pennsylvania statutory appraisal value, yes.

Q And do you think in your opinion that a Bangor Punta would have put itself in the position where it wouldhave to pay 41 per cent interest, pay for the 41 per cent interest of Chris-Craft in cash?

A Well, I think it would have preferred to work out an accommodation, but it had an enormously strong bargaining position.

Q Do you think that it would have is the question? I am asking your opinion.

A Yes, I think it would have.

Q You make another point in your report, Mr. Rosenkranz -- I am trying to find the page here -- on page 17. You say that "A responsible underwriter," that is the last sentence of the first full paragraph, "A responsible underwriter would, in our view, have had serious reservations about managing a distribution threatened by merger at any time."

Do you see that?

A Yes, sir.

Q What do you base this reservation on?

A The reservation is that ~~the underwriter -- that~~ there is no identity of interest between Bangor Punta and the purchasers of Piper's stock on this hypothetical underwriter~~ing~~ distribution. In fact, there's a complete conflict of interest because Bangor Punta will want at some point to merge out that minority on terms that make sense for Bangor Punta. And that has to give an underwriter extreme reservations and pause, since he is selling Piper

shares of common stock and recommending the acquisition of those to his clients, whereas those clients can at some period down the road wind up with Bangor Punta's securities that may not be common stock, that may have very difficult characteristics and are obviously securities in a very, very different issue.

Q Are you familiar with the offering by United Brands of its portion of its interest in Baskin Robbins Ice Cream Company?

A Yes, sir, I am.

Q Your firm was a member of that syndicate?

A Yes, sir.

Q Do you recall that a minority interest, approximately 17 per cent, was sold publicly?

A Yes, sir.

Q Do you recall whether anything occurred to that Baskin & Robbins investment which was held by the public?

A There was subsequently a cash tender offer involving that partiuclar situation.

Q And it merged back into United Brand; is that correct?

A No, it was not.

Q Excuse me.

A It was not merged back into United Brands. It

was purchased by a British group. And I think that there was essentially a complete identity of interest in these cases between the public who owned, let us say, a 15 per cent minority, or whatever, and the 85 per cent majority holder to get the best possible price when the company was merged.

Here there is a complete conflict of interest where Bangor Punta wants these people to get the lowest possible price because it is the purchaser, it is not a seller.

Q And you base this, your concern about the threatened merger, as I note on page 7, you said "We have reviewed press releases and other materials relative to Bangor Punta's intention to merge."

Now, you cited, as one example, the present release which was issued on May 7; is that correct?

A Yes, sir.

Q What are the other releases which you referred to? Excuse me, May 8th.

A I am sorry, I just don't recall the dates of the other statements.

Q Well, do you have them in any portfolio with you, in your records here in the courtroom?

A No, sir, I don't.

Q Well, after you get off the stand, is it possible

for you to go back to your office or to your files and produce all the press releases you have which state that Bangor Punta intends or threatens to merge Piper Aircraft into Bangor Punta and give them to Mr. Liman so he can produce them here for his Honor?

A Sure, I will be happy to do that.

Q You also refer to other materials in your note 16.

A Right.

Q What other materials are you referring to?

A I was familiar with an agreement between Bangor Punta and I belive the Equitable Life Assurance Society that provided financing to Bangor Punta for -- in connection with the Piper acquisition, and that those financing arrangements contemplated that ultimately there would have to be a merger.

Q Do you have a copy of that agreement which you have referred to with you in the courtroom today?

A No, sir.

Q Do you have a copy of that agreement in your files?

A I don't believe so. I think my knowledge of that is through testimony in this proceeding, the prior proceeding in this case.

Q You mean you actually saw the agreement, read the

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agreement yourself?

A No, I am saying that I didn't actually see or read the agreement? I don't believe. I think it was described in testimony. But I must say my recollection on this is imprecise.

Q Well, what other materials did you have that you referred to in note 16?

A No, what I am referring to is the Equitable agreement and the press relase and Bangor Punta's exchange offer.

Q Are you referring to the prospectus?

A Yes.

Q I show you Exhibit 25, which was marked in evidence, and direct your attention to page 5 of the prospectus. Is that what you are referring to?

A Yes, that is right.

Q All right. So now we have the May 8th press release, wehave the press releases which you have back in your office files which you are going to produce through Mr. Liman, after you ~~left~~ leave the stand, you have your knowledge of an agreement with Equitable which you gleaned apparently from some transcript somewhere, and you have the reference in Exhibit 25.

A That is right.